

STANDARD CONDITIONS OF SALE

1. GENERAL

All orders are accepted and goods supplied to the following express terms and conditions (the Company's standard conditions of sale) and, save to the extent that the exclusion or restriction of liability may be prohibited statute, all other conditions, warranties and representations, expressed or implied and statutory or otherwise, except as to title, and hereby excluded. Any order placed by a customer shall constitute an offer to contract up on these express terms and conditions, and no addition thereto or variation there from whether contained in the customer's order or otherwise shall apply unless expressly agreed in writing by the Company's authorised representative.

2. DEFINITIONS

'The Company' means First Choice Computers (West Midlands) Ltd.
'The Customer' means the person to whom the Company may agree to sell goods in accordance with the Company's standard conditions of sale.
'The Goods' means the articles or things or any of them or any part of them to be provided by the Company in accordance with the Company's standard conditions of sale.

3. ORDERS

All orders are subject to availability of the goods and to acceptance by the Company's authorised representative. Any prior confirmation by the Company by telex or telephone or fax shall be deemed to be provisional only. Subsequently, all orders placed by the Customer to the Company either by telephone, Telex, fax or e-mail shall be considered by the Company as a binding contract.

The company reserves the right to sub-contract any part of any work or supply of any Goods or services.

4. PRICES

(a). Unless specifically agreed by the Company in writing, prices do not include delivery charges to the Customer. VAT or installation charge.

(b). Catalogues, price lists and other advertising literature or material as used by the Company are intended only as an indication to price and range of goods offered and no prices, descriptions or other particulars contained therein shall be binding to the Company.

(b). All quoted or list prices are based on the cost of the Company of supplying the goods to the Customer and if before delivery of Goods there occurs any increase in any way of such costs in respect of the Goods which have not yet been delivered the price payable shall be subject to amendment without notice at the Company's discretion.

5. RETURNED GOODS AND CANCELLATIONS

The Customer shall not return Goods or cancel orders without the Company's previous consent. Such consent will not be given where Goods have been specifically purchased or produced by the Company to meet the Customer's requirements. If the Company gives such consent it reserves the right to make a 25% cancellation/restocking fee.

6. MANUFACTURER'S SPECIFICATION

The Company will not be liable in respect of any loss or damage caused by or resulting from any variation for whatever reason in the Manufacturer's specification or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. The Company will endeavour to advise the Customer of any such impending variation as soon as it receives notice thereof from the Manufacturer.

6. CARRIAGE AND DELIVERY

(a). Delivery dates quoted whether verbally or otherwise are estimates only and in regard to any such date time shall not be of the essence.

(b). The Customer shall be entitled to make partial deliveries or deliveries by instalments and these conditions shall apply to each partial delivery.

(c). Unless otherwise specifically agreed prices do not include delivery charges to the Customer, and the Company reserves the right to levy a charge for delivery to any destination advised by the Customer.

7. PASSING OF RISK AND PROPERTY

(a). Risk in the Goods shall pass to the Customer on delivery.

(b). Property in the Goods remain in the Company until payment in full therefore has been made by the Customer.

(c). If payment in full is not made in accordance with the Company's standard conditions of sale the Company may require the Customer to return the Goods forthwith and if the requirement is not immediately complied with the Company may be entitled at any time and without notice to retake possession of the whole or any part of the Goods (and for that purpose to enter the premises occupied by the Customer and sever the Goods from anything they are attached to without being responsible for any damage thereby caused) without prejudice to any remedy that may be available to the Company.

8. DEFECTS AND USE

Save as herein expressly provided, and save to the extent that the exclusion or restriction of liability may be prohibited by statute, the Company shall not be liable for any loss of whatsoever nature or to whomsoever, or whatsoever claims arising out of the use of the Goods. The Customer shall indemnify the Company against all claims made against the Company by any third party in respect thereof. Unless otherwise agreed.

(a). Where the Goods are rejected by the Customer as not being in accordance with the customer's order, the Company will only accept the return of such Goods provided that it receives written notice thereof, giving detailed reasons for rejection, within 5 days of receipt of the Goods by the Customer, and if such notice is not received by the Company within the said period of 5 days the Goods shall be deemed to have been accepted by the Customer. The Company will not consider any claim for compensation, indemnity, or refund until liability if any has been established or agreed with the Manufacturer and where applicable the Insurance Company and under no circumstances shall the invoiced cost of the Goods be deducted or set off by the Customer until the Company has passed a corresponding credit note and ...

(b). In the case of defects or faulty workmanship in the Goods or any part thereof the customer shall not be entitled to receive any compensation, credit or refund in excess of that received by the Company under any guarantee or warranty given to it by the Manufacturer or the supplier thereof.

9. PAYMENT

(a). The Customer shall pay for each instalment of the Goods delivered to him as though each instalment was delivered under a separate contract.

(b). Unless there be any express agreement to the contrary all accounts are payable on delivery.

(c). For Customers with credit accounts payment shall be made 30 days from date of invoice.

(d). If the Customer fails to make payment on the due date the Company may charge interest at the rate of 4% above the BARCLAYS PLC base rate at the time of any overdue payment until payment is made in full and at the Company's option without prejudice to any other right or remedy available to the Company cancel and suspend any further deliveries to the Customer.

10. DESPATCH

All times quoted for despatch are to be treated as estimates only and without prejudice, although every endeavour will be made by the Company to adhere to them. Quotations or offers of goods are ex-stock are subject to the Goods being unsold at the time of receipt of the Customer's written order. All despatch dates are calculated from the date of acceptance of the Customer's order or from the date when all outstanding technical details have been resolved whichever is the later.

11. CUSTOMER'S DEFAULT AND CANCELLATIONS AND RESCHEDULING OF DELIVERIES

(a). If the Customer shall make default in or commit any breach of any of its obligations to the Company or if the Customer being an individual (or when the customer is a firm, any partner in that firm) shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors or shall purpose to do so if in Scotland he shall be made insolvent or not our bankrupt or any application shall be made under any Bankruptcy Act for the time being in force for sequestration of his estate or a Trust deed shall be granted by him on behalf of his creditors or the Customer being an incorporated body any resolution or petition to wind up its business or amalgamation or if a liquidator or receiver or manager of such corporate body or its undertaking property or assets or any part thereof shall be appointed or if the Customer shall be insolvent or shall or shall admit its inability to meet its commitments promptly as and when due the Company shall have the right (without prejudice to any further or other claims or right which the Company might have) forthwith to cancel any uncompleted order or to cancel or suspend delivery and, notwithstanding any other provisions of the Company's standard conditions of sale, payments for any delivery already made shall immediately become due.

(b). Requests by the Customer for cancellation of any order or for rescheduling of deliveries will only be considered by the Company if made in writing, and shall be made subject to the written acceptance of the Company in accordance with sub-clause 11(a) as foreshad, or if cancelled or rescheduled at the request of a Customer as aforesaid then the Customer shall indemnify the Company against all loss, costs (including the cost of labour and material used and overheads incurred), damages, charges and expenses arising out of the order and the cancellation or rescheduling thereof.

12. FORCE MAJEURE

The Company shall not be liable for the cancellation by it or any order or any unfulfilled part thereof or effecting partial delivery or performance by performance by the Company is prevented or delayed whether directly or indirectly by any cause whatsoever beyond the reasonable control of the Company whether such cause existed or was foreseeable at the date of acceptance of the Customer's order by the Company or not and without prejudice to generality of the foregoing any cause shall be deemed to prevent, hinder or delay the Company if the Company is thereby prevented, hindered or delayed from fulfilling other commitments whether to the Customer or to third parties.

13. NON-STANDARD GOODS

Unless otherwise agreed the Goods are supplied in accordance with the Manufacturer's standard specifications. The Company reserves the right to increase its quoted or listed price or to charge accordingly in respect of any orders accepted for products of non-standard specification and in no circumstances will it consider cancellation of such orders or the return of the Goods.

14. SEVERABILITY

If and to the extent that any provision or any part of a provision of the Company's standard conditions of sale is illegal, void or unenforceable for any reason, then such provision or part thereof (as the case may be) shall be deemed to be severable from the remaining provisions or parts of the relevant provision (as the case may be) all of which remaining provisions shall remain in full force and effect.

15. WAIVER

The waiver by the Company of any breach or any term hereunder shall not prevent the subsequent enforcement of that term, and shall not be deemed a waiver of any subsequent breach.

16. SOFTWARE

(a). All software, including related documentation, is supplied under licence of the applicable proprietary owner. TITLE OR OWNERSHIP TO SOFTWARE DOES NOT TRANSFER TO THE CUSTOMER UNDER ANY CIRCUMSTANCES.

(b). It is the sole responsibility of the Customer to comply with any terms and conditions of licence attaching to software supplied and delivered by the Company and the Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the proprietary owner.

(c). All software delivered hereunder is supplied 'as is' and the sole obligation of the Company in connection with the supply of software is to obtain and supply a corrected version from the Manufacturer concerned in the event such software fails to conform to its product description or proves in any other way to be defective PROVIDED ALWAYS that the Customer notifies the Company of any defect or non-conformance to product description within thirty days of the date of delivery of the applicable software.

17. EXPORT

If the Customer proposes to export any Goods purchased from the Company the Customer shall reveal to us in writing the proposed country of destination of such Goods at the time of making his enquiry, specification or order and failure on the part of the Customer to notify the Company of any such intention to export shall tender any contract relating to such goods voidable at the Company's option notwithstanding that any act or thing may have been done by the Company in performance of such contract.

18. INDEMNIFY

(a). The Company will indemnify the customer for direct physical injury or death caused by defects in the equipment sold to the Customer or by the negligence of its employees in the connection of the performance of their duties under this Agreement.

(b). The Company will indemnify the Customer for direct damage to property caused by defects in the equipment sold to the Customer or by negligence of its employees in the connection of the performance of their duties under this Agreement. The total liability of the Company under this sub-clause shall be limited to £100,000 for any one event or connected events.

(c). In no event shall the Company be liable for indirect or consequential damages including but not limited to damages caused by loss of data and except as stated in (a) and (b) above the Company disclaims all liability to the Customer for any losses incurred by the Customer as a result of any negligence or other tortious act by the Company, its employees or agents.

19. ASSIGNMENT

The Customer agrees not to assign or transfer the Agreement or any of its rights herein without prior written consent of the Company.

20. INTERPRETATION

This contract shall be governed in all respects by English Law and the parties hereby submit themselves to the Jurisdiction of the English Courts. Any dispute arising under or in connection with these conditions or the sale or supply of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement (or by default) nominated on the application of either party by the President for the time being of the Law Society.