



# A.J. ACCESS PLATFORMS LIMITED TERMS AND CONDITIONS OF SALE

## 1. INTERPRETATION

1.1 In these conditions the following words have the following meanings:

**the Company:** The company is AJ ACCESS PLATFORMS LIMITED and it's trading divisions only that provides the Goods to the Buyer

**the Buyer:** any person, firm or company who enters into a contract for the provision of Goods with the Company

**Contract:** any contract between the Company and the Buyer for the sale and purchase of the Goods incorporating these Conditions;

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4;

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4. In these conditions headings will not affect the construction of these conditions

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract will be on these conditions to the exclusion of all other terms and conditions irrespective of when they were provided by the buyer (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. Nothing in this condition will exclude or limit the company's liability for fraudulent misrepresentation.

2.4 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are completely and accurately recorded in its order and the Company shall have no liability whatsoever with regard to any order made which is not accurate.

2.7 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

## 3. DESCRIPTION

3.1 The description of the Goods shall be as set out in the Company's quotation.

3.2 All drawings, descriptive matter, photographs, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract. The Buyer must satisfy themselves as to the condition of the Goods and the Buyer is welcome to come and inspect the Goods at any time before entering into a contract to buy the Goods.

## 4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

4.2 The Buyer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.



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- 4.4 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason whatsoever the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods will pass to the Buyer immediately (including the risk for loss or damage caused by the Company's negligence);
  - (b) the Goods will be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading/unloading the Goods.
5. **NON-DELIVERY**
- 5.1 The quantity and or quality of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity and or quality of the Goods received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
6. **RISK/TITLE**
- 6.1 The Goods are at the risk of the Buyer from the time they are loaded onto the delivery vehicle at the Company's premises.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) hold the Goods; and
  - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - (c) not destroy, deface or obscure any identifying mark, safety notice, or packaging on or relating to the Goods;
  - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
  - (e) hold the proceeds of the insurance referred to in condition 6.3(d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may not resell the Goods before ownership has passed without the express written agreement of the company.



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- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
  - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
  - (c) the Buyer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
7. **VARIATIONS**
- The Buyer shall not alter any of the Goods, except as agreed in writing by the Company until the price of the Goods has been paid to the Company in full and all other sums which are or which become due to the Company from the Buyer on any account are settled in full
8. **PRICE**
- 8.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.
- 8.2 The price for the Goods shall be ex works and specifically exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.
9. **PAYMENT**
- 9.1 Unless otherwise agreed in writing by the Company, Payment of the price for the Goods is to be in full prior to the despatch of any of the Goods.
- 9.2 Time for payment shall be of the essence.
- 9.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 9.4 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 9.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 9.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Bank of England Base Rate, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 in addition to the above interest rates.
10. **QUALITY**



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- 10.1 Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 10.2 In the absence of a specification of sample all goods supplied shall be within the normal limits of industrial quality.
- 10.3 The onus is on the Buyer to inspect the Goods and to satisfy themselves as to the condition of the Goods before entering into a contract to buy the Goods.
- 10.4 All Goods are sold as seen.
- 10.5 The Company warrants that (subject to the Buyer satisfying the other provisions of these conditions) upon delivery, and for a period of 1 month from the date of delivery, the Goods will:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1994;
  - (b) be reasonably fit for their purpose; and
  - (c) the Buyer alters or repairs such Goods without the written consent of the Company.
- 10.6 The Company shall not be liable for a breach of any of the warranties in condition 10.5 unless:
- (a) the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 2 days of the time when the Buyer discovers or ought to have discovered the defect; and
  - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.
- 10.7 The Company shall not be liable for a breach of any of the warranties in condition 10.5 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
  - (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
  - (c) the Buyer alters or repairs such Goods without the written consent of the Company.
- 10.8 Subject to conditions 10.6 and 10.7, if any of the Goods do not conform with any of the warranties in condition 10.5 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company.
- 10.9 If the Company complies with condition 10.8 it shall have no further liability for a breach of any of the warranties in condition 10.5 in respect of such Goods.
- 10.10 Any Goods replaced will belong to the Company.

## 11. **LIMITATION OF LIABILITY**

- 11.1 Subject to condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions; and
  - (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 11.4 Subject to conditions 11.2 and 11.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price paid to the Company under the Contract; and



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- (b) the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of good-will or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 12. **ASSIGNMENT**

12.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12.2 The Company may assign the Contract or any part of it to any person, firm or company.

## 13. **FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 14. **GENERAL**

14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

14.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## 15. **INSURANCES & LICENCES**

15.1 It is the Buyer's sole responsibility to ensure that they have adequate insurance in place to cover them when using the Goods.

15.2 It is the Buyer's sole responsibility to ensure that they comply with the relevant laws in relation to the Goods and that they have obtained the necessary licences and that when using the Goods they do not break any legal or other obligations.

## 16. **COMMUNICATIONS**

16.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.

16.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);



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- (b) if delivered by hand, on the day of delivery;
- (c) if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

16.3 Communications addressed to the Company shall be marked for the attention of The Managing Director.

## 17. **HEALTH AND SAFETY**

The Buyer must ensure that all of their operatives, premises and work carried out must comply with the Health and Safety at Work Act in its entirety and must not put the Company or anyone representing the Company at risk.

## 18. **FINANCING PROVISIONS**

In the event that the Buyer finances the purchase of the Goods through a bank or other lender ("Funder"), the Buyer will provide the name and address of the Funder to the company immediately after such financing is arranged, and acknowledges that the company shall enter into a sales contract for the Goods with Funder (the "Funder Contract"). Notwithstanding anything to the contrary contained herein, upon payment in full for the Goods from Funder ("Payment"), legal and equitable title to the Goods shall pass from the company to the Funder, and not to Buyer. If Buyer enters into a lease or other agreement with Funder pursuant to which the Buyer maintains possession and control of the Goods ("Lease"), until seller receives Payment, the Buyer shall:

- (a) not, under any circumstances, sell, assign, transfer, pledge or charge any of the Goods and shall keep the Products free from all liens and third party rights other than those created by the Lease
- (b) maintain the Goods at the Buyer's expense in accordance with the manufacturers recommendations, keep them in good and safe working order and not alter or modify the Goods or any of the identifying marks on them
- (c) ensure that any person who operated or maintains the Goods has received appropriate training with respect thereto as prescribed by applicable law or otherwise
- (d) ensure that the Goods remain in the Buyer's possession and control and promptly notify the Seller in writing of any change in location of the Goods except that it may hire out the Goods in the ordinary course of business and on normal commercial arm's length terms.

## 19. **WARRANTY FOR EQUIPMENT**

Used equipment sold hereunder is sold on an "As is, where is, with all faults" basis with no warranties whatsoever, except as to title, unless otherwise specifically agreed in writing by the buyer and the company. The company assumes no responsibility for the condition, safety, legal compliance or usability of the used equipment and makes no representation of warranty, expressed or implied, with respect to the used equipment including, without limitation, any implied warranty of merchantability or fitness for a particular purpose. The company makes no representation or warranty regarding the condition of the used equipment, for the sufficiency of any warnings, instructions or manuals provided with the used equipment. The company recommends and the buyer acknowledges that the buyer should contact the original manufacturer to obtain all available information for the Used Equipment, including but not limited to product manuals, warnings, safety bulletins, recall notices, and instructional placards before using the used Equipment. The company shall not be responsible for providing such information. The buyer agrees not to assert any claims against the company with respect to the used Equipment or its use. The buyer agrees that it shall respect the used Equipment prior to issuance of a purchase order for such Equipment and acknowledges that it is not relying upon any photographs, images, videos, representations, statements or other assertions made by the company with respect to the used Equipment's condition, but is relying upon its own knowledge and/or inspection of the Used Equipment.