

Terms and Conditions

1 Introduction

Definitions

1. In these terms the following definitions shall apply:

- (a) “Hardware” means the hardware items specified in the quotation.
- (b) “Software” means the program specified in the quotation and shall include any media upon which the same is contained.
- (c) “Firmware” means the firmware embedded in the Hardware specified in the quotation and shall include any media upon which the same is contained.
- (d) “Equipment” means the Hardware, Firmware and Software jointly.
- (e) “Services” means the services specified in the quotation.
- (f) “Company” means Thermoteknix Systems Ltd., registration number 01624251, registered office: 1st Floor Cloister House Riverside, New Bailey Street, Manchester, M3 5FS, UK.
- (g) “Customer” means the legal person or entity contracting to purchase Equipment or Services from the Company.

Quotations

- 2. (i) Prices are valid for the period specified in the quotation.
- (ii) Prices are quoted in GB Pounds Sterling and are exclusive of all taxes and duties.
- (iii) Quoted prices are firm and not subject to escalation for the duration of a contract.
- (iv) Prices are valid only if the quoted offer is accepted as a whole. Prices and terms will be adjusted accordingly for part orders.

Terms of Payment by Telegraphic Transfer (TT)

- 3. (i) The Customer shall pay 25% of the total price shown in the quotation for the Equipment and Services at the time of order. The Customer shall pay the balance of 75% on notice to ship. Payments must include VAT if applicable. Time for payment shall be of the essence.
- (ii) The customer shall make payments by telegraphic transfer to the account nominated by the Company in the quotation.

Terms of Payment by Letter of Credit

- 4. (i) The Customer agrees to format the Letter of Credit payment in either of two ways:
 - (a) **100%** out of an irrevocable, confirmed, unconditional and non-transferable Letter of Credit; or
 - (b) **25%** of the total contract price for equipment as a down payment within 30 days of signing of contract against presentation of the down payment invoice, then **75%** out of an irrevocable, confirmed, unconditional and non-transferable Letter of Credit.
- (ii) Letters of Credit must be opened in favour of Thermoteknix Systems Ltd and be confirmed without any reserve by a first class London clearing bank, allowing partial shipments and be available against presentation of the usual shipping documents or in case shipment should be impossible for any reasons beyond the Company’s control against presentation of the warehouse or forwarder’s receipt.
- (iii) Letters of Credit must be established within 30 days of contract signing and must be valid until at least two months after the contracted delivery date.

- (iv) The Customer shall pay all charges and costs relating to, without limitation, establishment and confirmation of any Letter of Credit, advising, negotiating or alteration fees, Bank Guarantee or Performance warranty.
- (v) Settlement is payable 30 days from sight of documents drawn on Barclays Bank.

Payments

5. (i) All payments over £1,000 made using a corporate credit card are subject to a 3% handling charge applied to the full amount.
- (ii) The Company will confirm its bank details on the quotation supplied to the Customer and bank details will only be changed in official correspondence sent by postal mail and not by email. If the Customer receives any communication purporting to come from the Company and which purports to change the Company's bank account details or to request that funds are sent to another account, the Customer agrees to verify the change by contacting the Company's salesperson by telephone. It is the Customer's responsibility to ensure payments are applied to the correct account.

Bank Guarantees

6. Bank guarantees including, without limitation, advance payment bonds, performance bonds and warranty bonds must state an expiry date. If no date is stated they shall be deemed to automatically expire 24 months from dispatch of the goods. On expiry the Customer must return all original documentation or provide a cancellation letter to the Company. If the original documentation and cancellation letter are not returned to the Company on expiry the Customer agrees to indemnify the Company against all bank charges and fees relating to the guarantee from the time of expiry and to pay the Company a £750 administration fee.

Late Payment

7. The following terms apply in the event of failed or late payment:
- (i) If the Customer fails to make any payment on the due date then without prejudice to any of the Company's other rights the Company may:
- (a) suspend or cancel deliveries of any product or service due to the Customer; and/or
 - (b) appropriate any payment made by the Customer under any other contract with the Company as the Company may in its sole discretion think fit; and/or
 - (c) charge the Customer compensation and statutory interest on the sum due pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).
- (ii) The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set-off or counterclaim which the Customer may have or allege to have or for any reason whatever.
- (iii) The Customer shall be liable for the Company's legal costs and other expenses incurred as a result of non-payment or late payment of the invoice on an indemnity basis.

Storage and Cancellation

8. (i) Customers must collect their goods from the Company or their nominated shipping agent within 7 days of notification to collect. Customers who delay collection are deemed to have accepted storage services and insurance charged at 0.5% of the net contract value per week or part thereof. Charges will be added to the Customer's invoice and the Customer agrees to pay the same.
- (ii) The Customer will be deemed to have cancelled their order if payment is not received by the Company within 30 days on terms requiring payment on notification of readiness to ship.

(iii) The Company will charge a restocking fee of 25% for cancelled orders calculated on the full invoiced amount and the Customer agrees to pay the same.

Delivery

9. (i) All delivery terms are specified in accordance with Incoterms 2010.

(ii) The export of Equipment may require a UK export licence. No Equipment will be dispatched until the export is fully licensed.

(iii) The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Equipment or Services promptly or at all.

(iv) Notwithstanding that the Company may have delayed or failed to deliver the Equipment or Services promptly the Customer shall be bound to accept delivery and to pay for the Equipment and Services in full provided that delivery shall be tendered at any time within six (6) months of the proposed delivery date.

(v) The Customer shall be deemed to have accepted the Equipment five days after delivery unless the Customer notifies the Company to the contrary.

Software

10. (i) The Customer acknowledges that the Software and Firmware components of the Equipment are licensed and not sold to the Customer.

(ii) On receipt of full payment the Company grants the Customer a non-exclusive non transferable licence to install and use the Software and documentation ('Documentation') in digital or printed format on equipment owned by the Customer or under the Customer's control and permits a single installation on one computer at one location at any one time. However, if the Software is being installed on a network the Customer may install the server and database portions on one computer at one location at any one time and connect multiple copies of the client for use by multiple users.

(iii) For Equipment containing embedded Firmware this Agreement permits the Firmware to be used by multiple users of the Equipment as supplied.

(iv) The Customer is licensed to make only one backup copy of the Software and Digital Documentation insofar as is necessary for the use of the Software. Printed Documentation may not be copied without the express written consent of the Company.

(v) The Customer agrees it shall not, nor permit others to:

a. copy the Software, Firmware or Documentation except as permitted by this Agreement: any other copies are unlawful

b. reverse engineer, decompile or disassemble the Software or Firmware

c. distribute, rent, loan, sub-license sell or otherwise transfer all or part of the Software, Documentation or any rights granted hereunder to any other person without the prior written consent of the Company

d. remove, alter or obscure any proprietary notices, labels or marks in or on the Software, Firmware or Documentation

e. modify, translate or adapt the Software, Firmware or Documentation, nor arrange or create derivative works for any purpose including for error correction

f. utilize any equipment, device, software, information or other means designed or adapted to circumvent or remove any form of copy protection used by the Company.

(vi) The Agreement shall be strictly limited to the Equipment and Services stated herein and unless provided for, maintenance to software and all other software services shall be the subject of separate agreements between the parties hereto.

(vii) The Company has no obligation to develop updates to any Software or Firmware component.

Commissioning

11. (i) By ordering commissioning services the Customer agrees to complete a pre-commissioning form and return it to the Company with an authorised signature confirming that all on-site preparatory work is complete or will be complete prior to the commissioning engineer's arrival on site. Failure to adequately prepare the site for commissioning or other on-site failures will delay or postpone the commissioning and incur additional costs that must be borne by the customer. The Customer agrees to pay all additional costs in full immediately on receipt of the invoice from the Company.

(ii) Parts other than those supplied by the Company including but not limited to locally purchased fibre cable and PCs are not guaranteed by the Company.

(iii) The Customer is responsible for installing equipment strictly in accordance with the instructions provided by the Company in the installation manuals. Any deviation must be agreed with the Company in advance and in writing. The Customer is liable for any increased commissioning time and costs resulting therefrom.

Warranty

12. (i) Commissioning by parties other than the Company or its authorised partners shall void the warranty.

(ii) Failure by the Customer to install, store, operate and maintain the Equipment in accordance with the Company's manuals shall void the warranty.

(iii) The customer shall not copy, decompile, modify, or reverse engineer any parts of the Equipment and any attempt to do so shall void the warranty.

(iv) The Company excludes all liability in respect of claims on voided warranties.

(v) Warranty is provided on a 'Return to Base' basis. The Customer is responsible for transport and insurance costs between the Customer's site and the Company's authorised service centre.

(vi) Consumable items are excluded from the warranty.

(vii) Damage caused by direct or indirect exposure to sun or laser radiation is excluded from the warranty.

Third Parties

13. The Company accepts no responsibility for the delay or non-performance by third parties involved in establishing a complete system and payment provisions herein remain unaffected.

Exclusion of Liability

14 (i) As far as is permitted by law the Company excludes liability to the Customer for any indirect or consequential loss or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of this contract.

(ii) As far as is permitted by law the Company excludes liability to the customer in respect of loss or defects in the Equipment or Services except as specified in particulars but without prejudice to the generality of the foregoing the Company shall not be liable for any consequential loss or damage resulting therefrom.

(iii) Nothing in this clause 14 excludes liability for death or personal injury resulting from negligence, for fraud or fraudulent misrepresentation, or for breach of implied covenants as to title.

(iv) The Company accepts no responsibility or liability and makes no warranties whatsoever whether expressed or implied with regard to the same including but not limited to its quality performance merchantability or fitness for any particular purpose.

(v) The Equipment is a tool intended to be used by trained professionals only. It is not a substitute for your professional judgment. The Equipment is no substitute for experienced operators. The Company shall not be liable in any manner whatsoever for the results obtained through the use of the Equipment. Persons using the Equipment are responsible for its supervision, management and control. This responsibility includes the determination of appropriate uses for the Equipment and its selection to achieve the intended results.

Documentation

15. All documentation, reports, specifications and the like supplied by the Company shall form part of this Agreement and shall be subject to the terms and conditions herein.

Intellectual Property

16. The specifications and designs of the Equipment (including copyright, design right or other intellectual property in them) shall as between the parties be the property of the Company. Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Company then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Equipment shall not infringe the rights of any third party.

Title and Risk

17. The Equipment shall be at the risk of the Customer from the time of delivery. However, the Equipment shall remain the sole and absolute property of the Company until the Customer has paid (i) the Company for the Equipment in full and in cleared funds and (ii) any other debts or moneys (or the balances thereof) owed to the Company by the Customer in full and in cleared funds. The Company may recover payment for the Equipment notwithstanding that the ownership of the Equipment has not passed to the Customer. The Company hereby reserves the right to immediately re-possess any Equipment to which it has retained title as aforesaid and, in connection therewith, the Customer hereby irrevocably authorizes the Company, its employees and/or any of its agents to enter the Customer's premises (or any other premises where the Equipment is or may be stored) at any time during normal business hours, and without further notice, in order to inspect and (where applicable) recover any such Equipment. The Company's rights under this clause shall survive any termination of its contract with the Customer for whatever reason.

Force Majeure

18. Neither Party to this Agreement shall be liable for its failure to perform any or all of its obligations hereunder due to events beyond its reasonable control, including, but not limited to:

- a. War, terrorism, hostilities, invasion, rebellion
- b. Acts of God, fire, flood, epidemic, storms or other natural severe events
- c. Strikes, riots, general shortage of transport, labour or material, production difficulties, delays and defaults of suppliers and subcontractors
- d. Government action, judicial action, unexpected laws, refusal or revocation of export licences or delays associated with export control compliance.

Delay occasioned thereby shall not be a breach of this Agreement.

Export Control

19. The Equipment may be subject to UK Export Control Legislation and require an export licence. The Customer agrees to supply accurate end user details and comply with all export licence requirements and regulations. No Equipment for export will be dispatched until the export is fully licensed. Refusal or revocation of an import or export licence is deemed to be a force majeure event.

General

20. (i) This Agreement shall be subject to the laws of England & Wales and the jurisdiction of the Courts of England & Wales.

(ii) The foregoing terms and conditions shall prevail notwithstanding any alternative terms and conditions submitted by the Customer in respect of the Equipment.

(iii) Any provision of this contract which is or maybe void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.

(iv) No waiver or forbearance by the Company (whether express or implied) in enforcing any of its rights under this contract shall prejudice its rights to do so in the future.

(v) The Company may license or sub-contract all or any part of its rights and obligations under this contract without the Customer's consent.

(vi) The Company may cancel this contract at any time before the Equipment or Services are delivered by giving written notice. On giving such notice the Company shall promptly repay to the Customer any sums paid in respect of the price thereafter. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

(vii) The Company operates a continuous program of product development; specifications are subject to change without notice.

(viii) Customers who require configuration control of the Equipment must specify this requirement at the time of quotation.

(ix) This Agreement constitutes the entire agreement between the Company and the Customer and supersedes all prior agreements understandings and negotiations.