



Terms and Conditions of Sale

1. Interpretation

“Company” means Open Date Equipment Limited (registered in England under number 1158619).

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company.

“Contract” means the contract for the purchase and sale of the Goods.

“Customer” means the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.

“Goods” means the goods, products, each part of a system and any system supplied as a whole (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions.

“Price” means the amount payable for the Goods under the Contract.

1.1 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Prevailing Terms

2.1 These Conditions constitute the entire understanding between the parties to the exclusion of any other express or implied terms and conditions, and shall supersede all prior promises, arrangements, representations or undertakings, whether oral or written.

2.2 These Conditions shall not be modified or varied except in writing signed by a director of the Company, or other authorised signatories of each of the parties; and no other action by the Company shall be deemed to constitute acceptance of any other, or modified terms.

2.3 The Company’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract, the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 No order submitted by the Customer shall be deemed to be accepted by the Customer unless and until confirmed in writing by the Company’s authorised representative.

2.5 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

2.6 The quantity, quality and description of and any specification for the Goods shall be set out in the Company’s quotation (if accepted by the Customer) or the Customer’s order (if accepted by the Company).

2.7 If the Goods are to be manufactured or any process or design is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection which are paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company’s use of the Customer’s specification.

2.8 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements, which do not materially affect their quality or performance.

3. Quotations and Pricing

3.1 Quotations are open for acceptance within a period of 60 days from the date thereof. Prices are quoted Ex-works the Company’s factory.

3.2 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.

Payment Terms

- 3.1 The Price shall be paid either:
- 4.1.1 by payment of the full invoice value in cleared funds within 30 days of the date of the Company's invoice; or
 - 4.1.2 paid by the instalments specified in the quotation and upon the date of the invoice for the amount concerned.
- 4.2 Sums overdue for 14 days or more shall bear interest calculated from the due date on a daily basis at a rate of 3% above the base lending rate of National Westminster Bank plc from time to time until payment in full including accrued interest.
- 4.3 If at any time the Customer:
- 4.3.1 owes any money to the Company under these Conditions in excess of any credit terms allowed to the Customer;
 - 4.3.2 the Customer (other for the purposes of reconstruction or amalgamation) enters into an arrangement or composition with its creditors, has a receiver appointed over the whole or part of its undertaking or assets, enters into voluntary or compulsory liquidation or if, in the reasonable opinion of the Company, the Customer becomes unable to meet its debts as they fall due; then and in any such event, the Company may, without prejudice to any other rights:
 - a) require redelivery of or, instead, repossess all delivered Goods and, after prior written notice to the Customer, enter upon any premises occupied by the Customer in order to do so; and/or
 - b) cancel the Contract in respect of any undelivered Goods without liability.
- 4.4 If the Customer wishes the Goods to be purchased under a credit arrangement made with a third party, the Company will not unreasonably withhold consent to the Customer's rights under this Agreement being assigned by the Customer to the third party. The acceptance of such credit arrangements shall not affect the amount of the payment obligations set out in the Contract.
- 4.5 Time of payment shall be of the essence of the Contract.

5 Cancellation

Orders for Goods may only be cancelled at the Company's discretion up to 14 days of the date of despatch and only with the prior written agreement of the Company. The Customer will incur a penalty of 25% of the order value for all cancelled orders. Orders requiring unique or Special to type equipment cannot be cancelled.

6 Delivery

- 6.1 Time for delivery shall not be the essence of the Contract, all delivery promises or forecasts whilst given in good faith are estimates only. The Company will use its best endeavours to meet quoted delivery dates but shall in no event be liable for any delay.
- 6.2 Default in delivery shall not entitle the Customer to repudiate the Contract.
- 6.3 Where Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

7 Loss or Damage in Transit

- 7.1 The Goods shall be the sole risk of the Customer from the time of delivery to the Customer or his agent or any carrier engaged by or on behalf of the Customer.
- 7.2 The Company shall not be liable in any way if the Goods are damaged in transit or for shortages unless the Customer notifies such damages or shortages in writing to the carriers and the Company within 7 days after receipt of the Goods.
- 7.3 In the event of non-delivery of the Goods the Customer of the Companies invoice will entertain no claim unless notice in writing of such non-delivery reaches the Company within 14 days after receipt of the Company's invoice.

8 Risk and Title

- 8.1 The Goods shall remain the property of the Company until the Price and any interest and other monies payable by the Customer to the Company under this Agreement have been paid in full.
- 8.2 Until payment of all sums due to the Company, the Customer shall be responsible for storing the delivered Goods safely and in proper conditions and in a manner which enables them to be identified and, if appropriate, retrieved by the Company.

9 Warranty

- 9.1.1 The Company Warrants that at the date of supply the Goods shall substantially correspond to the description and perform in the manner described in the documentation / manual(s) issued by the Company; and
- 9.1.2 be free from defects in workmanship and materials.
- 9.2 If at any time within 12 months from the date of delivery, the Customer notifies the Company that the Goods do not conform to the warranty in clause 10.1, the Customer may return the Goods and the Company will at its option and as its sole obligation under the warranty replace or repair the Goods as soon as practicable.
- 9.3 The warranty under clause 9.1 shall not apply to the replacement of consumable items, (foil, thermal ribbon, print bases, type etc), damage to surface finishes or in respect of any accidental damage or misuse by the Customer, or its employees or agents, or any third party or as a result any unauthorised attempts at repair, connection to other equipment or electrical surges or unsatisfactory environment.
- 9.4 Print heads utilised in thermal products and systems carry a 6 month warranty only provided they are used exclusively with thermal ribbon supplied by the Company.

10 Limitations to liability

- 10.1 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) and subject to the express warranty given to the Customer under Clause 9 and in the light of the Customer's opportunity to take up a maintenance agreement, all conditions and warranties which otherwise would have been implied in relation to the sale of Goods by statute, common law, equity or usage relating to the merchantability, description or quality of the Goods or its fitness for any purpose are hereby expressly disclaimed.
- 10.2 The Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the Price, except as expressly provided in these Conditions
- 10.3 Nothing in this clause 10 shall exclude or restrict liability for death or personal injury resulting from the Company's negligence.
- 10.4 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.
- 10.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Condition, the Company shall be entitled to replace the Goods (or the part in question) free of charge, or at the Company's sole discretion, refund to the Customer the Price for the Goods (or a proportionate part of the Price), but the Company shall have no further liability to the Customer.

11 Intellectual Property Rights

- 11.1 All drawings, plans, designs, software, specifications, samples, information and technical data of or in relation to the Goods and all copyrights and other intellectual property rights therein are and shall remain the property of the Company.
- 11.2 The Customer shall not without the Company's consent in writing in any way reproduce such drawings, plans, designs, software, specifications, samples, information and data or any part thereof or part with the possession of them or disclose them to third parties.
- 11.3 The Customer shall on demand deliver up to the Company all such drawings, plans, designs, software, specifications, samples, information and data for the time being in his possession and all copies thereof.
- 11.4 The Customer acknowledges that all particulars of the Goods (whether know-how information documents or records or otherwise) disclosed to him (whether before or after the date of the Contract) are disclosed in confidence and the Customer shall before and after the completion of the Contract keep (and use all reasonable endeavours to ensure that all of its officers, employees and agents shall keep) all such particulars confidential and secret except insofar as the same are or subsequently come into the public domain.

12 Force Majeure

- 12.1 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
 - 12.1.1 Act of God, explosion, flood, tempest, fire or accident;
 - 12.1.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 12.1.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 12.1.4 Import or export regulations or embargoes;
 - 12.1.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
 - 12.1.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 12.1.7 Power failure or breakdown in machinery.

13 General

- 13.1 Any notice required to be given under these Conditions may be delivered by hand, sent by first class post, fax or e-mail to the recipient party referred to in these Conditions, or to such other address as may have been notified to the serving party; and, if posted, shall be deemed to have been served 48 hour after posting.
- 13.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver or any subsequent breach of the same or any other provision.
- 13.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 13.4 Nothing in these Conditions is intended to confer on any person any right to enforce any term of these Conditions which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 13.5 These Conditions are governed by the laws of England and the Company and the Customer submit to the non-exclusive jurisdiction of the English High Court of Justice to resolve any disputes arising.