

## Terms and Conditions of mCubed Information Technology Ltd.

### 1. Business Customers and Consumers

- 1.1 Some of these terms apply to consumers only; some apply to business customers only. Those terms are marked as such.
- 1.2 All other terms apply to all customers.
- 1.3 You are classified as a business customer if you indicate to us that the goods supplied by us will be used in the course of your business or if you use the goods in the course of your business.
- 1.4 If you are not a business customer, you are a consumer. Nothing in these terms affects your statutory rights as a consumer.
- 1.5 These terms only apply to goods purchased from mCubed Information Technology GmbH (the "Supplier")
- 1.6 The Supplier may change these terms of sale without notice to you in relation to future sales.

### 2. Description and price of the goods

- 2.1 The description and price of goods you order will be as shown on our website, price list or advertisement at the time you place your order.
- 2.2 The price quoted excludes delivery (unless otherwise stated).
- 2.3 The goods are subject to availability. If on receipt of your order the goods you have ordered are not available in stock, the Supplier will inform you as soon as possible and refund or re-credit you for any sum that has been paid by you or debited from your credit card for the goods.
- 2.4 Every effort is made to ensure that prices shown on our website, price list or advertisement are accurate at the time you place your order. If an error is found the Supplier will inform you as soon as possible and offer you the option of reconfirming or canceling your order. If the Supplier does not receive an order confirmation within 14 days of informing you of the error, the order will automatically be cancelled. If you cancel the Supplier will refund or re-credit you for any sum that has been paid by you.

### 3 Delivery

- 3.1 All delivery times quoted are estimates only. The goods you order will be delivered to the address you give when you place your order.
- 3.2 If the Supplier fails to deliver within a reasonable time, you may (by informing us in writing) cancel the contract, however:
  - 3.2.1 you may not cancel if the Supplier receives your notice after the goods have been dispatched; and
  - 3.2.2 if you cancel the contract, you can have no further claim against us under that contract.
- 3.3 If you fail to take delivery because you have cancelled your contract under the Distance Selling Regulations the Supplier shall refund or re-credit you within 30 days for any sum that has been paid by you for the goods, less any expenses incurred for failed delivery and any missing or used items.
- 3.4 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).
- 3.5 The Supplier may deliver the goods in installments. Each installment is treated as a separate contract.
- 3.6 If you deliberately fail to take delivery of the goods (otherwise than by reason of circumstances under control of the Supplier) then without prejudice to any other right or remedy available to the Supplier, the Supplier may:
  - 3.6.1 store the goods until actual delivery and charge you for reasonable costs (including insurance) of storage; or
  - 3.6.2 sell the goods at the best readily obtainable price and (after deducting all reasonable storage and selling expenses) account to you for any excess over the price you agreed to pay for the goods or charge you for any shortfall below the price you agreed to pay for the goods.

### 4 Delivery and safety

- 4.1 The Supplier may decline to deliver if the Supplier believes that it would be unsafe, unlawful or unreasonably difficult to do so.

### 5 Payment terms

- 5.1 Payment for the goods and delivery charges can be made by any method shown on the Suppliers website, price list or advertisement at the time you place your order. Unless you have an approved credit account payment shall be due prior to delivery and no delivery will be made until cleared funds are received.
- 5.2 Business customers: Payment is due no later than 7 days from the receipt of goods (unless otherwise agreed in writing).
- 5.3 If you fail to pay us in full on the due date:
  - 5.3.1 the Supplier may suspend or cancel future deliveries;
  - 5.3.2 we may cancel any discount offered to you;
  - 5.3.3 you must pay us interest at the actual rate of the MFI interest rate.
- 5.4 If you have an approved business credit account the Supplier may withdraw it or reduce your credit limit or bring forward your due date for payment.
- 5.5 The Supplier may take any of those actions in 5.4 at any time and without notice.
- 5.6 You do not have the right to set off any money you may claim from us against anything you may owe us.
- 5.7 While you owe money to us, the Supplier has a right to keep any property they may hold of yours until you have paid the Supplier in full (a lien)
- 5.8 You are to indemnify the Supplier in full and hold us harmless from all expenses and liabilities which may incur

(directly or indirectly and including legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.

### 6 Title

- 6.1 Business customers: Until you pay all debts you may owe us:
  - 6.1.1 all goods supplied by us remain our property;
  - 6.1.2 you must store them so that they are clearly identifiable as our property;
  - 6.1.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
  - 6.1.4 you may use those goods and sell them in the ordinary course of your business, but not if:
    - a. the Supplier revokes that right (by informing you in writing); or
    - b. you become insolvent.
- 6.2 Business customers: You must inform us (in writing) immediately if you become insolvent.
- 6.3 Business customers: If your right to use and sell the goods ends you must allow us to remove the goods.
- 6.4 Business customers: shave your permission to enter any premises where the goods may be stored:
  - 6.4.1 at any time, to inspect them; and
  - 6.4.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 6.5 Despite our retention of title to the goods, the Supplier has the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.
- 6.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.

### 7 Risk

- 7.1 The goods are at your risk from the time of delivery.
- 7.2 You must inspect the goods on delivery. If any goods are damaged (or not delivered), you must inform us within 24 hours and confirm this in writing within 5 working days of delivery (or the expected delivery time). You must give us (and any carrier) a fair chance to inspect the damaged goods.

### 8 Warranties

- 8.1 The Supplier warrants that the goods
  - 8.1.1 comply with their description on our acknowledgement of order form; and
  - 8.1.2 are free from material defect at the time of delivery.
- 8.2 The Supplier warrants that the goods will be free from defects in materials and workmanship for a period of twelve months from the invoice date ('the Warranty Period') .
- 8.3 The Supplier will (at their option) repair or replace any goods which show defects (in materials or workmanship) during the Warranty Period
- 8.4 Where the goods have been repaired or replaced under the provisions of the Warranty Period the Warranty Period shall not be extended.
- 8.5 Business customers: Our decision will be final as to whether or not an alleged defect occurs within the Warranty Period or outside the Warranty Period.
- 8.6 Business customers: The Supplier gives no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.
- 8.7 If you believe that we have delivered goods which are defective in material or workmanship, you must:
  - 8.7.1 inform us (in writing), with full details, as soon as possible
  - 8.7.2 and allow us to investigate (we may need access to your premises and product samples).
  - 8.7.3 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 8.7) in full, we will (at our option) replace the goods or refund the price.
- 8.8 We do not warrant that the goods are compatible with or upgradeable to other goods whether hardware or software unless we have agreed this in writing.
- 8.9 Our warranties shall not apply:
  - 8.9.1 if there has been improper use of the goods or if the goods have been modified without our prior written authorisation; or
  - 8.9.2 if the goods malfunction because of abnormal environmental causes (for example mains power transients or extremes of humidity) which we had not been informed of when you placed your order.
- 8.10 We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.
- 8.11 For all other liabilities not referred to elsewhere in these Terms our liability is limited in damages to the price of the goods.
- 8.12 Consumers: Your statutory rights are unaffected.

### 9 Return of Goods

- 9.1 We will accept the return of goods from you only:
  - 9.1.1 by returning in advance a completed RMA (Return to Manufacturer Authorisation) Form and being issued an RMA number;
  - 9.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered) ; and
  - 9.1.3 where the goods are as fit for sale (including original undamaged packing and all original material) on their return as they were on delivery.
- 9.2 If we accept the return of goods in a non-saleable condition we may charge you the cost of bringing the goods to a saleable condition.

### 10 Export terms

- 10.1 Where the goods are supplied by us to you by way of

export from Austria then the 'Incoterms' of the International Chamber of Commerce which are in force at the time of the date when the Contract is made shall apply.

- 10.2 If there is any conflict between the Incoterms and the Terms in these Terms of Trading then these Terms shall prevail.
- 10.3 You are responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties due.
- 10.4 The goods shall be delivered as agreed between us but we shall be under no obligation to give a notice.
- 10.5 You have the right at your expense and by arrangement with us to inspect the goods at our premises or at the point of shipment before shipment except where otherwise agreed. If you do not exercise that right then the fact the goods passed our quality inspection will be conclusive proof that they were of the warranted quality. We are not liable for any defect in the goods which would be apparent on your inspection unless a claim is made before shipment. We are not liable for any damage during transit.
- 10.6 Payment of all amounts due to us shall be made as stipulated by us unless otherwise agreed in writing.
- 10.7 We shall have no liability for death or personal injury arising from the use of the goods where the goods are to be delivered in the territory of another State.
- 10.8 Because of domestic and foreign export and re-export regulations you warrant not to export or re-export any goods supplied by us unless you first obtain (in writing) any consents or authorisations that are required by such regulations.

### 11 Cancellation

- 11.1 Suppose the order is cancelled (for any reason) or you wish to reschedule any delivery. We may require you to pay us the costs (direct and indirect) of all stock (finished or unfinished) we may then hold (or to which we are committed) for the order and to pay a reasonable administrative charge.
- 11.2 We may suspend or cancel the order, by written notice if:
  - 11.2.1 you fail to pay us any money when due (under the order or otherwise);
  - 11.2.2 you become insolvent;
  - 11.2.3 you fail to honour your obligations under these terms.
- 11.3 You may not cancel the order or reschedule the delivery unless we agree in writing (and clause 12.1 then applies).
- 11.4 We will only consider requests for order cancellation or delivery rescheduling if received by us at least 12 hours before the goods are despatched.
- 11.5 If you fail to take delivery because you have cancelled your contract under the Distance Selling Regulations the Supplier shall refund or re-credit you within 30 days for any sum that has been paid by you for the goods, less any expenses incurred for failed delivery and any missing or used items.

### 12 Force majeure - business customers only

- 12.1 Suppose we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control. We may then cancel or suspend any of our obligations to you, without liability.
- 12.2 Examples of those circumstances include act of God, accident, explosion, fire, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

### 13 General

- 13.1 Austrian law is applicable to any contract made under these terms. The court of Vienna is the only place for jurisdiction.
- 13.2 If you are more than one person, each of you has joint and several obligations under these terms
- 13.3 If any of these terms are unenforceable as drafted:
  - 13.3.1 it will not affect the enforceability of any other of these terms; and
  - 13.3.2 if it would be enforceable if amended, it will be treated as so amended.
- 13.4 We may treat you as insolvent if:
  - 13.4.1 you are unable to pay your debts as they fall due; or
  - 13.4.2 you (or any item of your property) becomes the subject of:
    - a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
    - b. any application or proposal for any formal insolvency procedure; or
    - c. any application, procedure or proposal overseas with similar effect or purpose.
- 13.5 Business customers: all websites, brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract us.
- 13.6 Business customers only: any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
- 13.7 No contract will create any right enforceable by any person not identified as the buyer or seller.
- 13.8 If one clause of this contract is against law, all others still apply.

Vienna, 01.08.2005