

# Metreel Limited Terms and Conditions of Sale

## METREEL LTD CONDITIONS OF SALE

The attached acknowledgement confirms the order we have received from you and we confirm that that order has been accepted solely on the basis of these conditions of sale.

### General

- 1.1 These Conditions are the only conditions upon which we, Metreel Ltd ("Metreel Ltd") are prepared to deal with you, the Buyer, and they shall govern the contract between us to the entire exclusion of any other express or implied conditions.
- 1.2 In these Conditions:
- |                 |   |
|-----------------|---|
| "Buyer"         | means the person, firm or company buying Goods or Services from Metreel Ltd                                   |
| "Goods"         | means the goods (including any instalment of the goods or any parts for them) which Metreel Ltd is to supply; |
| "Services"      | means the services which Metreel Ltd is to provide or to have provided;                                       |
| "Specification" | means the specification agreed between Metreel Ltd and the Buyer.   |
| "Contract"      | means the contract for the sale and purchase of the Goods and/or supply of the Services.                      |
| "Customer"      | means the Buyer as defined above or any person, firm or company to whom goods or services are sold on to.     |
- 1.3 These Conditions may only be modified by a variation in writing signed by a Director of Metreel Ltd and no other action on the part of Metreel Ltd (whether delivery of the Goods, or supply of the Services, or otherwise, shall be construed as an acceptance of any other conditions.
- 1.4 These Conditions other than as modified in accordance with condition 1.3 and together with the matters referred to in the Specification and in Metreel Ltd's quotation and/or acceptance of order embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications. This condition shall not exclude any liability in respect of any statement made fraudulently by either party prior to the date of the Contract.
- 1.5 The employees and agents of Metreel Ltd are not authorised to make any representations concerning the Goods or Services unless confirmed by Metreel Ltd in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 1.6 A contract is only concluded when Metreel Ltd despatches an acceptance of order to the Buyer. Any quotation in whatever form given to the Buyer is given subject to these Conditions and does not constitute an offer to sell or supply.

### Performance

- 2.1 Metreel Ltd warrants that the Goods that it manufactures shall at the time of delivery be free from defects in workmanship and materials and/or the Services will be carried out with reasonable care and skill. If any Goods or Services do not conform to this warranty Metreel Ltd will at its option:-



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- 2.1.1 replace the Goods or repeat the Services found not to conform to the warranty;
- 2.1.2 take such steps as Metreel Ltd thinks necessary to bring the Goods into a state where they are free from such defects; or
- 2.1.3 take back the Goods found not to conform to the warranty and refund the appropriate part of the purchase price; or
- 2.1.4 refund the appropriate part of the charge for the Services.

Provided that Metreel Ltd's liability shall in no event exceed the price of the Goods or Services and performance of any one of the above options shall constitute an entire discharge of Metreel Ltd's liability under this warranty.

## 2.2 The above warranty is subject to the following conditions:-

- 2.2.1 the Buyer must give written notice to Metreel Ltd of the alleged defect in the Goods or Services within seven days of the time when the Buyer discovers or ought to have discovered the defect, and in any event within twelve months of delivery or supply of the Goods or Services; and
- 2.2.2 the Buyer must give Metreel Ltd a reasonable opportunity to inspect the Goods and, if requested by Metreel Ltd, return the allegedly defective Goods to Metreel Ltd's works, carriage pre-paid, for inspection to take place there; and
- 2.2.3 the Goods have not been altered or modified in any way whatsoever and have not been subjected to misuse or unauthorised repair; and
- 2.2.4 the Goods have been properly installed and connected; and
- 2.2.5 the Buyer has complied with its obligations under this or any other contract made with Metreel Ltd.

## 2.3 Where the goods are manufactured other than by Metreel Ltd, and resold by Metreel Ltd, Metreel Ltd gives no warranty as to the quality or fitness for purpose of such goods save that Metreel Ltd shall use all reasonable endeavours to pass on to the buyer the benefit of any warranties given by the third party manufacturer or supplier. Such goods will include goods merely assembled by Metreel Ltd from proprietary components manufactured by third parties.

## 2.4 Except as provided in condition 2.1 and in Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982:-

- 2.4.1 all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Goods or as to the provision of the Services are expressly excluded; and
- 2.4.2 Metreel Ltd shall not under any circumstances be liable in contract, tort, statute or otherwise for any direct, indirect or consequential loss or for increased costs or expenses, or loss of profit, business, contracts, revenues or savings howsoever arising which may be suffered by the Buyer (except in respect of death or personal injury caused by Metreel Ltd's negligence).

## 2.5 If, notwithstanding the above provisions of this Condition, Metreel Ltd is found liable for any loss or damage suffered by the Buyer, that liability shall in no event exceed the price of the Goods or Services..



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- 2.6 Metreel Ltd reserves the right to make any changes to the Specification of the Goods or to the components within the Goods provided that these do not materially affect the quality or performance of the Goods.
- 2.7 Where the completion of the contract requires the cooperation of the buyer and/or the timely submission of information, data or agreement to proposals by the buyer, Metreel Ltd shall not be liable for the consequences of the buyer's failure to so act or respond on time, in full or in part.

## Price

- 3.1 The price for the Goods and Services will be Metreel Ltd's list price last published on the date on which that consignment of Goods is dispatched to the Buyer or the Services are provided unless a price has been quoted and agreed with Metreel Ltd within the last 90 days.
- 3.2 Metreel Ltd reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to Metreel Ltd which is due to any factor beyond its control (such as without limitation, foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) any changes in delivery dates, quantities or the Specifications for the Goods or Services which is requested by the Buyer or any delay caused by any of the Buyer's instructions or his failure to give Metreel Ltd adequate information or instructions.
- 3.3 The price for the Services shall be exclusive of any accommodation, living or travelling expenses incurred by Metreel Ltd as a result of the provision of the Services, for which Metreel Ltd shall invoice the Buyer separately unless Metreel Ltd's quotation includes such items.
- 3.4 The contract price is exclusive of value added tax or any similar taxes, levies or duties, which will be added to or charged on invoices at the appropriate rates.

## Payment

- 4.1.1 Unless otherwise agreed in writing, the Buyer shall pay the price for the Goods and Services within 30 days of the date of Metreel Ltd's invoice. Nothing in this contract shall prevent Metreel Ltd from refusing to offer credit terms or from varying the period of payment from 30 days.
- 4.1.2 This order when delivered will be followed and evidenced by invoices. All such invoices will be due and payable in full by the payment date clearly shown. You, as the customer, agree to make known in writing to us any comments, complaints or other lawful objections which may delay the payment of any invoice raised by the payment date agreed for the operation of the sales ledger account we maintain for you. Metreel Ltd has an obligation to respond to any such communications received. The time taken to respond and resolve such issues will not change the due date for payment of an invoice.
- 4.2 If any payment that is to be made by the Buyer to Metreel Ltd is overdue, interest will be chargeable on the sum due and interest previously applied, before and after judgement on a day to day basis at an annual rate of 5 per cent above the Bank of England base rate from time to time applicable, until the sum due, and the interest charged, are paid. In addition, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, Metreel Ltd may charge a fee, in addition to any interest charge, in respect of any invoice, or debt, which is not paid on its agreed date.



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- 4.3 Where any sum owed by the Buyer to Metreel Ltd under this or any other contract is overdue Metreel Ltd may withhold any deliveries or the supply of Goods or Services due to be made under this contract until arrangements as to payment or credit have been established which are satisfactory to Metreel Ltd.
- 4.4 Where the Goods or Services are delivered or supplied in instalments, each delivery or supply shall constitute a separate contract and each contract shall be separately invoiced and payment will become due as above
- 4.5 Metreel Ltd may set off against any monies due to it the value of any or all monies due from Metreel Ltd to the Buyer, at any time. To avoid doubt, for the purposes of this clause only, Buyer shall include subsidiary companies largely owned by the contract buyer and companies or firms under common ownership or control as the contract buyer.
- 4.6 Where the contract provides for the supply of Goods and also the supply of services, Metreel Ltd may invoice the buyer for any goods delivered notwithstanding that the completion of the services remains to be actioned.

## Lien

- 5.1 Metreel Ltd will, without prejudice to any other remedy available to it, have in respect of all unpaid debts due from the Buyer a general lien on all the Buyer's property in the Seller's possession for whatever purposes and whether worked upon or not and be entitled, on the expiration of not less than 14 days notice in writing to the Buyer, to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

## Delivery

- 6.1 Delivery of each consignment of Goods shall be made to the place designated by the Buyer when placing the order. Should Metreel Ltd give notice to the Buyer that Goods are ready for collection, the Buyer will arrange for the Goods to be collected within 2 working days of such notice.
- 6.2 The Services shall be supplied at the place designated by the Buyer when placing the order.
- 6.3 Unless otherwise agreed in writing, the price quoted by Metreel Ltd for the Goods shall be exclusive of the costs of delivery for which the Buyer will be invoiced separately. Such delivery charges shall include the costs of freight, packaging, reels and insurance together with Metreel Ltd's handling charge.
- 6.4 Any dates quoted for delivery of the Goods or supply of the Services are business estimates only and Metreel Ltd will not be liable for any loss or damage whether direct, indirect or consequential or loss of profit, business, contracts, revenues, or savings howsoever arising sustained by the Buyer as a result of Metreel Ltd's failure to comply with such delivery or supply times. Time for delivery, or supply, shall not be of the essence.
- 6.5 Where the Goods or Services are to be delivered or supplied in instalments, each delivery or supply shall constitute a separate contract and failure by Metreel Ltd to deliver or supply any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.6 If the Buyer fails to take delivery of the Goods then Metreel Ltd, without prejudice to any other rights or remedy it may have may either:-



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- 6.6.1 store the Goods as set out in clause 8; or
  - 6.6.2 sell the Goods and after deduction of Metreel Ltd's reasonable storage and sale expenses charge the Buyer for any shortfall below the Price due under the Contract.
  - 6.6.3 And invoice the customer on usual payment terms for the value of the goods to the extent that Metreel Ltd shall have a liability to its suppliers.
- 6.7 Where work or services provided by Metreel cannot be undertaken from the quoted or later agreed date of commencement as a result of the customer's or buyer's failure or inability to act, Metreel Ltd reserves the right to charge all reasonable additional costs incurred as a result of the delays caused. This provision shall also apply if work or services are delayed during the course of completion as a result of the customer or buyer's failure or inability to act. This provision will include any failure on the part of the customer or buyer to complete, or cause to have completed other works who's completion or progress is necessary for the works or services being provided by Metreel.

## Risk and Property

- 7.1 The risk in the Goods shall pass to the Buyer upon delivery of the Goods to the Buyer or any carrier acting on its behalf. If the Buyer fails to collect the Goods from Metreel Ltd's premises on the date specified or it fails to take delivery or Metreel Ltd is unable to despatch the Goods because of the Buyer's acts or omissions, the risk in the Goods shall still pass to the Buyer at the time when it should have collected the Goods or taken delivery.
- 7.2 The property in the Goods shall not pass to the Buyer until the full price of the Goods, and goods or services which are the subject of any other contract between Metreel Ltd for which payment is due, is paid in full.
- 7.3 Until such time as the property in the Goods passes to the Buyer:-
- 7.3.1 they shall be held by the Buyer in a fiduciary capacity and stored by the Buyer at its premises in such a manner that they are clearly identifiable as Metreel Ltd's Goods including by reference to the relevant serial numbers and shall be kept separate from any other goods, whether or not supplied by Metreel Ltd, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business; and
  - 7.3.2 the Buyer shall insure the Goods to the full replacement value of the Goods and shall note Metreel Ltd's interest on the policy; and
  - 7.3.3 the Buyer shall not pledge or charge the Goods and if the Buyer breaches this clause 7.3.3 the Price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary; and
  - 7.3.4 they shall be handed over to Metreel Ltd on demand and Metreel Ltd shall be entitled to re-take possession of them without prejudice to any of its other rights against the Buyer, and Metreel Ltd is granted a licence to enter into the Buyer's premises for the purpose of recovering the Goods.
- 7.4 If the Buyer fails to pay for the Goods in accordance with these terms Metreel Ltd will have the right to bring an action against the Buyer for the price of the Goods at any time notwithstanding that property in the Goods has not passed to the Buyer.



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## Storage

- 8.1 Metreel Ltd shall be entitled to store the Goods, or any of them, at the Buyer's expense at Metreel Ltd's premises or elsewhere if:-
- 8.1.1 where the Buyer is required to collect the Goods from the Metreel Ltd's works, it fails to take delivery at the time specified;
  - 8.1.2 where the arrangement is for the Goods to be delivered by Metreel Ltd, either it is unable to despatch the Goods by reason of the acts or omissions of the Buyer, or Metreel Ltd has despatched the Goods but the Buyer fails to take delivery;
  - 8.1.3 Metreel Ltd is withholding delivery of the Goods pursuant to Conditions 4.3.
- 8.2 The expenses that Metreel Ltd may re-claim from the Buyer include all reasonable costs incurred by Metreel Ltd, whether by way of storage, insurance, administrative or otherwise in respect of the Goods. It is expressly declared that it shall be reasonable for Metreel Ltd to take out insurance in respect of the Goods notwithstanding that the risk in the Goods has passed to the Buyer.

## Intellectual Property

- 9.1 The Buyer acknowledges that Metreel Ltd retains ownership of any intellectual property rights in the Goods or Services, and in any goods, products or materials made available or produced as part of the Services.

## Cancellation

- 10.1 Orders which have been accepted by Metreel Ltd can only be cancelled by the Buyer with the prior written agreement of Metreel Ltd and on condition that the Buyer shall indemnify Metreel Ltd in full against all loss (including loss of profit), costs, including the cost of all labour and materials used, damages, charges and expenses incurred by it as a result of cancellation.
- 10.2 If the Buyer enters into any voluntary arrangement with its creditors, becomes subject to an administration order, has a petition presented or an order made for its winding-up, has a receiver, administrator or administrative receiver appointed over all or any part of its undertaking or assets, goes into liquidation or ceases or threatens to cease to trade, then without prejudice to any other remedy available to Metreel Ltd, Metreel Ltd shall have the right to cancel the Contract or suspend further deliveries under the Contract without any liability to the Buyer. If the Goods or Services have been delivered or supplied but not paid for, the price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.
- 10.3 If the Buyer takes action in accordance with paragraph 10.2 above, Metreel Ltd shall be entitled to exercise its options to recover costs, charge storage, levy interest on sums due and expect payment for all such from the Buyer.

## Force Majeure

11. Metreel Ltd shall have the right to cancel or to reduce the volume of the Goods delivered or Services supplied if Metreel Ltd is prevented from or hindered in delivery of the Goods or supply of the Services through any circumstances beyond its control, including, but not limited



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to, strike, lock-out or other industrial action, closure of any supplier to Metreel Ltd, war, fire, Act of God, prohibition or enactment of any kind, without incurring any liability whatsoever.

## Set-Off

12.1 The Buyer will have no right of set-off statutory or otherwise.

## Governing Law

13.1 The contract is governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.404

## Third party rights

14.1 This Agreement does not create any right enforceable by any person not a party to it except a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party to this Agreement.

Note : Metreel Ltd's prices are calculated on the basis that the above Conditions will apply. If the Buyer requires prices to be quoted on a different basis it should inform Metreel Ltd.



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