

Terms & Conditions of Sale of Cades Limited

1. Definitions

In these terms and conditions of sale, unless the context otherwise requires,

“The Company” – Shall mean CADES Ltd.

“The Buyer” – Shall mean the person or persons, company, firm or other body to whom good and or services are to be supplied.

“Conditions” – Shall mean the Company’s terms and conditions of sale as set out below.

“Acknowledgement of Order” – Shall mean the written acceptance by the Company of the Buyers order.

“Contract” – Shall mean the agreement between the Buyer and the Company for the supply of goods and/or services including therein the Conditions and the Specification which shall continue the main agreement between the parties.

“Goods” – Shall mean the goods to be provided in accordance with the Contract whether subjected to Services or otherwise.

“Services” – Shall mean the installation of Goods and/or other services to be provided by the Company under the Contract.

“Contract Price” – Shall mean the sum stated in the Agreement of Order in respect of the Goods and/or Services.

“Specification” – Shall mean the written specification detailing the Buyers requirements in respect of the Goods.

“Premises” – Shall mean the Buyers premises or other location specified in the Contract at which under terms of the Contract the Company is to install and/or otherwise provide services in respect of the Goods.

2. Offer and Acceptance

- 2.1. The Company’s quotation shall not constitute an offer by the Company and no order shall result in binding contract until it is accepted by the Company on issue of its Acknowledgement of Order.
- 2.2. The Company accepts orders for the supply of goods and/or services subject only these Condition. The Buyer accepts that these Conditions shall govern relations between the Buyer and the Company to the exclusion of any other terms including without limitations, conditions and warranties (written or oral, express or implied) even if contained in any of the Buyers documents which purport to provide that the Buyers own terms shall prevail.
- 2.3. No variation, waiver or supplement to the Conditions shall be binding on the Company unless expressly accepted by the Company in writing. No agent, representative or employee below the level of Director has the power to accept any variation, waiver or supplement to these Conditions.
- 2.4. The Buyers order must be accompanied by sufficient information to enable the Company to proceed forthwith including without limitation, full and comprehensive details of all materials required to be extracted by the Goods otherwise the Company will be at liberty to amend the Contract Price to cover any change in circumstances after issue of the Acknowledgement of Order.
- 2.5. The Buyer warrants that all information and data supplied by the Buyer or its agent if representative to the Company including without limitation that contained in any analysis of substances to be extracted and in the Specification shall be accurate and comprehensive for the purposes of performance of the Contract and hereby indemnifies the Company against all costs, losses, expenses, claims, damages made against or incurred by the Company by reason of any breach of the warranty given above

3. Delivery

- 3.1. The Company may at the request of the Buyer and without incurring any liability in respect thereof make arrangements for transportation of the Goods to the Buyer, and in such circumstances the Buyer shall pay the costs thereof. The Company shall not be responsible for any shortage of or damage to Goods delivered and all claims in such regard must be made to the haulier of the Goods.
- 3.2. All times quoted for delivery of otherwise for performance of the Contract are estimates only and whilst the Company shall use all reasonable endeavours to achieve such times, time shall not be deemed to be of the essence of the Contract and no delay shall entitle the Buyer to cancel the Contract or refuse to accept delivery at any time.

- 3.3. The Company reserves the right to deliver Goods by instalments and in such event instalment shall be treated as a separate contract provided that deliveries of further instalments may be withheld until the Goods or materials comprised in earlier instalments have been paid in full.
- 3.4. If the Company is prevented from effecting delivery within 14 days after notification that the Goods are ready for delivery as a direct or indirect result of any act of omission on the part of the Buyer including without limitations receipt of inadequate forwarding instructions then the Buyer shall be deemed to have taken delivery on the date but for which act of omission delivery would have been made and the Company may (without prejudice to any of its other rights)
- 3.5. Invoice the Buyer for the Goods
- 3.6. Dispose of the Goods ordered at the best price reasonably available or
- 3.7. Arrange for the storage of the Good at the premises of the Company may so determine at the cost of the Buyer and the Buyer shall be liable for the cost of additional handling, transport and other associated costs.
- 3.8. In the event that the delivery is frustrated as a direct or indirect result of any cause whatsoever beyond the control of the Company, the Buyer shall be liable for the cost of all deliveries or attempted deliveries of the Goods made subsequent to such frustrations

4. Services

- 4.1. The Buyer shall at its own expense not later than 7 days before the delivery date of the Goods notified to the Buyer by the Company ensure that the Premises are ready to receive the Goods where the same are to be installed by the Company and that all installation facilities recommended by the Company have been provided. Such facilities shall include without limitation the provision of adequate working space, electrical installation and fittings and any other such matters notified by the Company to the Buyer. The Company will provide without charge and without liability therefore advice concerning the preparation of the Premises.
- 4.2. The Company shall within a reasonable time after the delivery of the Goods to the Premises and in any event after the Buyer has completed all works required in respect of installation facilities referred to above at clause 4.1. proceed to install the same.
- 4.3. The Buyer shall afford to the Company access to the premises to order to carry out the Services. The Company shall not be liable for any inconvenience expenses or costs (including any consequential loss or any loss of profits) arising by reason of the fact that the Goods are to be, are being or have been installed in the Premises.
- 4.4. If the Company is unable to effect the Services for a period of 14 days after notification by the Company that it is ready to commence provision of the Services as a direct or indirect result of any act or omission on the part of the Buyer including without limitation failure to afford access to the Premises then the Company shall be deemed to have provided and completed the Services on the date or dates but for which act or omission the Services would have been provided and completed and the Company may (without prejudice to any of its other rights) invoice the Buyer for the Services.

5. Price Variation

- 5.1. Unless otherwise stated in the Acknowledgement of Order, the Contract Price shall be in respect of all Goods and Services and shall be deemed to exclude Value Added Tax (VAT) and VAT will be added to all invoices at the rate applicable on the tax point date which date shall be the date of the invoice. Where before delivery or the date of the invoice, whichever is the earlier, the Goods and/or Services become subject to any additional duty, VAT or any other tax or surcharges (Taxes), in excess of the sum specified for such liabilities in the Company's Acknowledgement of Order or invoice, the Buyer shall be charged or shall pay such extra Taxes.
- 5.2. The Contract Price is based on the cost of materials, labour and other rates and prices ruling at the date of the Company's quotation. Notwithstanding the inclusion of the Contract Price in the Acknowledgement of Order all prices are subject to alteration without notice and the Goods will be invoiced at the priced ruling at the date of despatch.

6. Limitation of Liability of the Company

- 6.1. The Company shall endeavour to ensure that all materials and workmanship are performed so as to ensure that the Goods conform to Specification but –
- the Buyer shall assume sole responsibility for the capacity, fitness and performance of the Goods being sufficient and suitable for the purposes for which he requires the same and for the compliance of the Goods with the requirements of any Act of Parliament, bye-law or planning regulation which is in force at the time of the Contract or may come into force thereafter.
 - In particular (but without prejudice to the generality of the foregoing) the Company does not warrant that the noise level emitted from or generated by the Goods comply with any requirements whatsoever of the competent Local Authority or any other competent body and the Buyer accepts that it is solely responsible for ensuring that the Goods do so comply and if any further works are required to ensure such compliance the Company will undertake the same but at the cost of the Buyer.
- 6.2. The Company shall not be responsible for the remedy of any defects attributable to ordinary wear and tear, accidental damage, of the God, misuse or neglect of the Goods by the Buyer its servants or agents including but not limited to improper operation of the Goods, repairs maintenance or modification to the Goods carried out by someone other than the Company, transit or handling damage caused by the Buyer its servants or agents, use of the Goods otherwise than in the manner specified by the Company, any act of omission fault or negligence of the Buyer its servants or agents.
- 6.3. The Company's liability hereunder shall be strictly limited to executing any necessary repairs to or replacement of any Goods or part thereof which do not conform to Specification, written notice of which must be received by the Company within 14 days of delivery of the Goods or the completion of the Services as appropriate. If such notice is not received within the stated time limit the Goods and/or Services shall be deemed to be free from any defect.
- 6.4. If the Buyer notifies the Company of any alleged defect in the Goods and/or Services in accordance with clause 6.3. above the Company will despatch to Buyers site within a reasonable period personnel to inspect the Goods and the Services supplied hereunder to establish whether the same are defective. In the event that they are found not to conform to Specification the Company shall make suitable arrangements within a reasonable time to repair or replace the Goods or any part thereof at its option.
- 6.5. The Company shall not be liable for any loss or damage whatsoever (including consequential loss or damage or injury) in anyway suffered by the Buyer or any other person firm or company whatsoever (on the grounds of negligence or otherwise) by reason of the fact that the Company may have inspected, advised or approved any sites, plans, data or information supplied by or on behalf of the Buyer and the Buyer shall at all times indemnify and keep the Company indemnified against all losses, claims, damages, charges and expenses for injury (including death) suffered by any person or loss of or damage to property belonging to any person, firm or company for which the Company, its sub-contractors or their respective employees may be liable or deemed to be liable under the contract.
- 6.6. Notwithstanding the terms of clause 6.5. above the company accepts liability in respect of death or personal injury which arises as a direct result of its negligence where the contract is in respect of the supply of Goods and/or Services within the United Kingdom.
- 6.7. If the Company is held to be legally liable for any breach of this contract or shall become legally liable to the Buyer in any way howsoever the liability of the Company in respect of any or all causes of action shall in no circumstances exceed the Contract Price.
- 6.8. Other than as may be stated above within the clause 6 no warranty condition or representation is given or made as to the quality of the Goods or Services supplied hereunder their condition or their fitness for any particular purpose and any such warranty condition or representation whether express or implied and whether by statute or collateral agreement or otherwise is hereby excluded.

7. Risk and Title

- 7.1. Risk passes to the Buyer on delivery
- 7.2. The Property in the Goods and each and every part thereof shall remain with the Company until it has received in cash the whole of the Contract Price.

- 7.3. As long as the property remains with the Company, the Buyer may not sell the Goods without the prior written consent of the Company. If the Buyer should in breach hereof resell the Goods to a third party, or if he joins such materials to other items in such a way that both form integral parts of a new unit, the Buyer hereby assigns to the Company, until complete settlement of all the Company's claims, all receivables resulting from the sale of the Goods or from the connection of the Goods with other items.
- 7.4. As long as the property shall remain with the Company, the Buyer may not encumber the Goods delivered or transfer title in the Goods for security purposes. The Buyer shall immediately notify the Company by registered letter if a third party seizes the Goods sold. The Buyer shall bear the costs of any action resulting from such seizure.
- 7.5. As long as the property remains with Company, the Buyer agrees:
- 7.6. a) to insure the Goods against all insurable risks, and b) to submit the policy of insurance to the Company, and c) that the rights on the insurance shall accrue to the Company for the aforementioned period. Should the Buyer fail to submit evidence of existing insurance coverage while the property remains with the Company the Company may take out such insurance at the Buyers expenses.
- 7.7. In the event of any default by the Buyer in respect of any payments due to the Company or if a Receiver is appointed over any of its assets or if it enters into liquidation or passes resolution for winding-up (other than for the purposes of a bona fide amalgamation or bona fide reconstruction) or if it becomes bankrupt or enters into any arrangement with its creditors or if the Company has reasonable doubts as to the solvency of the Buyer or its ability to fulfil its obligations under the Contract and as long as the property remains with the Company then the Company may recover and remove the Goods. The Buyer hereby irrevocably undertakes to give access to the Company to the premises to enable the Company to retake possession of the Goods.

8. Payments

- 8.1. If no other terms of payment have been agreed upon in writing, payment shall be made within 30 days of the date of the Company's invoice. If any payment becomes overdue, the Company will without further request for payment charge default interest as defined in clause 8.2 below.
- 8.2. If the Buyer fails to make payment of a sum when the same becomes due whether under the Contract or any other Contract which the Company may have with the Buyer, the Company shall be entitled to charge the Buyer interest on the sum due under the Contract and unpaid calculated at a rate of 4% per annum over National Westminster Bank Plc base rate from time to time ruling. If such payment, or any part thereof, shall remain in arrears for 7 days after written demand shall have been made therefore, the Company shall have the further right to terminate the Contract and/or any such other such Contract and in either case, without prejudice to any other right or remedy which the Company may have.
- 8.3. Should the Company, before or after delivery, doubt the Buyers ability to pay, it can demand adequate security and, if the Buyer should not meet this request, it may terminate the Contract without any liability whatsoever to the Buyer, and without prejudice to any other rights of the Company.

9. Right of Set Off

No claim by the Buyer under warranty or otherwise shall entitle the Buyer to any deduction retention or withholding of any sums due for payment hereunder. The Buyer shall not be entitled to any set off of obligations within or between contracts with the Company.

10. Suspension

- 10.1. The Buyer may only suspend the Contract with the prior written approval of the Company reserves the right to make a charge for costs losses expenses and/or any other charge incurred either directly, indirectly or otherwise as a result of such suspension which shall be paid within 30 days of the notification of the charge by the Company to the Buyer
- 10.2. Upon the resumption of the Contract after any suspension the Company shall be allowed such extensions of time for the performances of its obligations as it may require having regard to the period of suspension and the Contract Price shall be adjusted accordingly.

11. Patents and Copyright

- 11.1. All estimates designs drawings plans or material prepared or submitted by the Company for the information of the Buyer (Materials) and the intellectual property rights therein shall remain the Company's property
- 11.2. The Materials must not in whole or in part be submitted to or copied or otherwise made use of by the Buyer or any other third party without the prior written consent of the Company.
- 11.3. The Materials shall be returned to the Company forthwith on demand or on termination of the Contract.
- 11.4. The Buyer shall at all times treat information in the Materials as confidential and may only use and make available to third parties the same insofar as this is for the purpose of performance of the Contract of use of the Goods.
- 11.5. Any of the Company's business trade secrets or other confidential information which may come into the Buyer's possession must be regarded as strictly confidential even after termination of the Contract.
- 11.6. The Company shall indemnify the Buyer against any claim for infringement of letters patent, registered design, trademark, service mark, or copyright (published at the date of Contract) by the use or sale of any of the Goods supplied by the Company to the Buyer and against all costs and damages which the Buyer may incur in any action for such infringement of for which the Buyer may become liable in any such action provided always that this indemnity shall not apply to any infringement which is due to the Company having followed a design or instructive furnished or given by the Buyer for the use of such Goods in a manner for a purpose or in a foreign country not specified by or disclosed to the Company or any infringement which is due to the use of such Goods in association or combination with any other items not supplied by the Company and further provided that this indemnity is conditional on the Buyer giving to the Company the earliest possible notice in writing of any claim being made or action being threatened or brought against the Buyer and on the Buyer permitting the Company at its own expense to conduct any litigation that may ensue and/or negotiations for a settlement of the claim.
- 11.7. The Buyer warrants that any design or instruction furnished or given by it shall not be such as will cause the company to infringe any intellectual property rights owned or enjoyed by any third party in the execution of the Contract and hereby indemnifies the Company against any and all losses damages costs and expenses which may arise directly or indirectly as a result of the Buyer's breach of this warranty.

12. Substitution of Materials, Alterations to Design or Specification

- 12.1. The Company reserves the right to substitute without prior notice or consultation other materials for those which may be specified in the Contract provided that the opening capabilities and technical properties are not, in the opinion of the Company, adversely affected.
- 12.2. All descriptions and illustrations contained in the Company's catalogues price lists and other advertisement matter are intended merely to present a general idea of the goods described therein and none of these shall form part of any contract.
- 12.3. Any alteration to design and/or specification requested by the Buyer shall be notified to the Company in writing. The Company may be at its sole option decide whether or not to incorporate any such alterations as are requested and if the same are incorporated the Contract Price shall be adjusted by the Company.

13. Termination by the Company

The Company shall (without prejudice to any of its other rights hereunder) be entitled to terminate any Contract forthwith in written notice to the Buyer, if the Buyer shall

- a) make any composition or arrangement with or assignment for the benefit of its creditors or has any process of execution levied upon his Goods or being a corporation goes into liquidation or passes a resolution for winding-up (other than for the purposes of a bona fide amalgamation or bona fide reconstruction) or has a Receiver appointed or being a person becomes bankrupt or commits any act of bankruptcy.
- b) Fail to pay any amounts falling due (whether under these conditions or otherwise) to the Company within 30 days of the date of payment falling due.
- c) Commit a breach of any term of the Contract or any other contract with the Company.

13.1.

Subcontracting

The Company reserves the right to subcontract all or any part of the Contract.

13.2. Non Waiver

Any concession, latitude or waiver the Company may allow or has allowed the Buyer at any time shall not prevent the Company subsequently exercising its full rights under the Contract.

14. Statutory and By Law Approvals

14.1. It shall be the responsibility of the Buyer to obtain all necessary permissions and licenses and to conform to the provisions of Act of Parliament, or any other by-laws, orders or regulations for the time being in force affecting the sale of the Goods under the Contract and/or its subsequent operation and the Buyer shall pay and indemnify the Company against all fees payable costs expenses, losses, claims and actions in connection therewith.

14.2. The Company's quotation and the Contract shall at all times be subject to all relevant laws regulations and acts of governmental authority and in particular to the Company gaining all necessary approvals and licenses with respect to the export of the Goods and the Company shall be under no liability whatsoever for any failure to perform the contract in any respect which is due to its compliance with any such laws regulations or acts or to its failure to gain such approvals or licenses.

15. Third Party Contracts

The Buyer shall in no way pledge the credit of the Company, nor make any representation nor give any warranty with regard to the Goods, nor shall the Buyer sell the Goods in the name of the Company nor describe nor infer that the Buyer is the agent of the Company. The Company will be held not liable in any way whatsoever for any loss incurred but the Buyer under any Contract between the Buyer and any third party due to any such default or breach whatsoever.

16. Force Majeure

In the event of the Company being delayed in or prevented from performing its obligations hereunder owing to any cause whatsoever beyond the Company's control including without limitation act of God, wars, strikes, lock outs, trade disputes or any other cause, the Company shall not be liable for any loss, damage or expenses incurred and shall be at liberty to cancel or suspend the Contract for the period during which such cause subsists without incurring any liability arising there from and the Buyer shall not be entitled to terminate the Contract.

17. General and Law

- 17.1. This Contract represents the entire agreement between the parties and supersedes all earlier warranties representations statements or agreements (whether oral or in writing) and may only be varied or amended in writing between the parties.
- 17.2. The headings of each provision are intended to be for convenience only and do not affect the interpretation thereof.
- 17.3. All notices of whatsoever nature shall be in English in writing (including telex and confirmed telefax) to be effective and shall be deemed to have been given 24 hours after despatch.
- 17.4. The Contract shall be construed and interpreted in accordance with English Law and the parties hereto hereby irrevocably submit to the jurisdiction of the English Courts.