
TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATIONS

1.1. In these Conditions:

"SSD" means Solid State Disks Ltd;

"Buyer" means the person firm or company so described in the Order;

"Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any varied or special terms and conditions agreed in writing between Acceptor and the Buyer;

"Contract" means the contract of the sale and supply of the Goods subject to these Terms and Conditions;

"Custom Specification" means any specification for the Goods which is outside the Original Specification of the Goods, or any specification to meet the specific requirements and/or requests of the Buyer;

"Deposit" means the part of the Price and may include any of all of the costs of packaging, handling, insurance and delivery of the Goods;

"Goods" means the Goods (including any installment of the Goods or any part of them) described in the Order;

"Invoice" means the invoice issued by SSD to the Buyer which contains the quotation number, the Price, the delivery details and any other special terms and conditions of the Contract as agreed between SSD and the Buyer;

"Order" means the written purchase order issued by the Buyer in response to the receipt of a Quotation;

"Original Specification" means the physical and technical characteristics of the Goods as described by the manufacturer and contained in any plans, data sheets, drawings, brochures, and any Product Literature supplied by the manufacturer for those Goods;

"Price" means the total purchase price of the Goods;

"Product Literature" means brochures, diagrams, website descriptions and other material describing the Goods;

“Quotation” means a quotation issued by SSD to the Buyer which contains the quotation number; the details of the quantity of the Goods to be sold; the Original Specification of the Goods; the Custom Specification of the Goods if applicable; the proposed delivery date of the Goods; the Price; the Deposit payable (if any); the costs payable for packaging, handling, insurance and delivery of the Goods; these standard Terms and Conditions of the Contract; any variations to the standard Terms and Conditions of the Contract as agreed between SSD and the Buyer; and any special terms and conditions of the Contract as agreed between SSD and the Buyer;

“Specification” means the Original Specification and/or the Custom Specification if applicable.

2. GENERAL BASIS OF SALE

2.1 These Terms and Conditions apply to all Contracts for sale of Goods by SSD, subject to any special terms and conditions as agreed in writing between SSD and the Buyer.

SSD will issue to the Buyer the Quotation. -The Quotation will be valid for a period of fourteen (14) days from the date of issue, after which time the Quotation may be amended, in whole or in part, or cancelled by SSD in SSD’s sole discretion without giving notice to the Buyer.

2.3 Upon receiving the Quotation, the Buyer may place an Order for the purchase of the Goods specified in the Quotation on the terms set out in that Quotation. The placing of an Order by the Buyer for the purchase of the Goods specified in that Quotation shall constitute acceptance of these Terms and Conditions and the terms of the Quotation, which may include variations to these and Terms and Conditions and/or special terms and conditions as agreed between SSD and the Buyer.

2.4 No Order submitted by the Buyer shall be deemed to be accepted by SSD unless and until confirmed in writing by SSD’s authorized representative, such acceptance to be confirmed within seven (7) days of receipt of the Order.

2.5 No variation to these Terms and Conditions, or any additional special terms and conditions, shall be binding unless agreed by SSD and the Buyer and- contained in the original Quotation. Any further variations or special terms and conditions must be agreed in writing by SSD and the Buyer.

2.6 The Buyer acknowledges that all advice, instructions or recommendations of SSD regarding the Order rely and are dependent upon all the information given to SSD by the Buyer.

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- 2.7 Following receipt of the Order, SSD will then supply the Goods to the Specification on the further terms and conditions set out herein.

3. ORDERS AND SPECIFICATIONS

- 3.1 The Buyer shall be responsible to SSD for ensuring the accuracy of the terms of any Order submitted by the Buyer, and for giving SSD any necessary information relating to the Goods pursuant to clause 2.5 or otherwise within a sufficient time to enable SSD to perform the Contract in accordance with its terms.
- 3.2 The quantity, type and description of the Goods shall, subject as provided in these Conditions, be as specified in the Order, in the Original Specification of the Goods and, in the case of Custom Specification, any other documentation which describes the Custom Specification.
- 3.3 If the Goods are ordered by the Buyer to a Custom Specification, the details of the Custom Specification must be provided by the Buyer to SSD in the Order or otherwise in sufficient detail to allow SSD to properly fulfill the Order. The Buyer shall indemnify SSD against all costs incurred by SSD in meeting the Custom Specification, and any costs, loss or damages incurred by SSD in connection with any claim for infringement of any intellectual property rights of any other person which results from SSD's use of the Custom Specification.
- 3.4 All drawings, illustrations or any Product Literature or other publications of SSD regarding the Goods must be regarded as general descriptions only, and exact specifications may vary from time to time.
- 3.5 Any Specification supplied by SSD to the Buyer in connection with the Contract, together with all intellectual property rights in the Specification, shall be the exclusive property of SSD. The Buyer shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Buyer, or as required for the purpose of the Contract. Upon request of SSD the Buyer will return to SSD any documents (or other media) in or upon which any part of the Specification has been supplied by SSD and shall not retain copies thereof.
- 3.6 SSD reserves the right to make any changes in the Original Specification of the Goods from time to time, whether or not they are required to conform with any statutory or other regulatory requirements applicable to the Goods.
- 3.7 No Order, which has been accepted by SSD may be cancelled by the Buyer except with the agreement in writing of SSD and on terms that the Buyer shall indemnify SSD in full against all loss, costs, damages, charges and expenses incurred by SSD as a result of the cancellation.

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- 3.8 No Order, which has been accepted by SSD may be changed or altered by the Buyer except with the agreement in writing of SSD and payment by the Buyer of a 10% surcharge (calculated as 10% of the Price) to SSD.

4. PRICE OF THE GOODS

- 4.1 The Price shall be SSD's quoted price for the Goods.
- 4.2 SSD reserves the right, by giving notice to the Buyer at any time between the date of the Quotation until immediately prior to delivery of the Goods, to increase the Price to reflect any increase in the cost to SSD which is due to any factor beyond the control of SSD, any change in delivery dates, quantities or the Specification, or any delay caused by any instructions of the Buyer or failure of the Buyer to give SSD adequate or accurate information or instructions.
- 4.3 Except as otherwise stated under the terms of the Quotation and unless otherwise agreed in writing between the Buyer and SSD, the Price is given by SSD shall include the cost of packing, handling, delivery and insurance to the normal place of business of the Buyer, and where SSD agrees to deliver the Goods to any other location, then the Buyer shall be liable to pay SSD's additional charges for packing, handling, delivery and insurance.
- 4.4 The Price is exclusive of any applicable tax and/or duty, which the Buyer shall be additionally liable to pay to SSD where applicable.

5. TERMS OF PAYMENT

- 5.1 SSD shall be entitled to invoice the Buyer for the Price at any time after receipt of the Order and prior to the Goods being ready and available for delivery.
- 5.2 The Buyer shall pay the Price, less any Deposit already paid by the Buyer and subject to clause 5.3 below, after receipt of the invoice and prior to the dispatch of the Goods by SSD for delivery to the Buyer. The time of payment of the Price shall be of the essence of the Contract, and SSD shall not be liable to any delay for delivery of the Goods arising from the delay of the Buyer in the payment of the Price.

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- 5.3 In the sole discretion of SSD, and subject to specific terms agreed in writing between SSD and the Buyer and specified clearly in the Quotation and/or the Invoice, SSD may deliver the Goods to the Buyer without payment of the Deposit and/or Price by the Buyer, and require payment of the Price at a time as agreed between SSD and the Buyer.
- 5.4 If the Buyer fails to make payment of the Price on the due date specified in the Quotation and/or Invoice then, without prejudice to any other legal right or remedy available to SSD, SSD shall be entitled to:
- 5.4.1 delay delivery of the Goods until the Price is paid in full by the Buyer;
- 5.4.2 cancel or suspend the Contract and any further deliveries to the Buyer;
- 5.4.3 appropriate any payment made by the Buyer to such of the Goods (or goods supplied under any other contract between the Buyer and SSD) as SSD may think fit (notwithstanding any purported appropriation by the Buyer); and/or
- 5.4.4 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above National Westminster Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. DELIVERY

- 6.1 Delivery of the Goods shall be made to the normal place of business of the Buyer, or another place as agreed between the Buyer and SSD and, subject to clause 5.3 above, by SSD delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and SSD shall not be liable for any early or late delivery of the Goods however caused.
- 6.3 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by SSD to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If SSD fails to deliver the Goods (or any installment), SSD's liability shall be limited to the value of those Goods that have not been delivered.
- 6.5 If the Buyer fails to take delivery of the Goods for whatever reason or fails to give SSD adequate delivery instructions at the time stated for delivery (otherwise

than by reason of any Force Majeure or by reason of SSD's fault) then, without prejudice to any other right or remedy available to SSD, SSD may:

- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price under the Contract.
- 6.6 Any charges quoted for delivery of the Goods including transport, packaging and insurance are approximate only and SSD shall not be liable for any changes to the charges quoted however caused.

7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time when SSD notifies the Buyer that the Goods are available for delivery or collection.
- 7.2 It shall be the responsibility of the Buyer at all times to insure the Goods when SSD notifies the Buyer that the Goods are available for delivery or collection. Where the Buyer has paid to SSD the Deposit, then the insurance of the Goods will be paid by SSD from this time, otherwise the Buyer will be required to make the necessary arrangement to insure the Goods.
- 7.3 The property in the Goods shall not pass to the Buyer until SSD has received in cash or cleared funds payment in full of the Price and all other charges, taxes, duties and expenses for the Goods sold and delivered by SSD to the Buyer pursuant to the Contract.
- 7.4 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as SSD's fiduciary agent and bailee, but shall be entitled to sell the Goods in the ordinary course of its business.
- 7.5 Until such time as the property in the Goods passes to the Buyer, SSD shall be entitled at any time to require the Buyer to deliver up the Goods to SSD and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8. BUYERS OBLIGATIONS

- 8.1 The Buyer shall be responsible at its own expense for:

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- 8.1.1 taxes and duties due and payable in the country and/or state of the location of the Buyer;
 - 8.1.2 Customs clearance in the country and/or state of the location of the Buyer; and
 - 8.1.3 Insurance of the Goods after delivery to the Buyer until the sale of the Goods by the Buyer or otherwise until title of the Goods passes to the Buyer.

9. WARRANTIES AND LIMITATION OF LIABILITY

- 9.1 Subject to these Terms and Conditions, SSD does not provide any warranty to the Buyer for the Goods other than: (a) the express and implied warranties provided by statute and/or common law and/or (b) the express warranties provided by the original manufacturer or supplier of the Goods. Where applicable, any warranties, conditions or other terms implied by statute or common law which can be excluded are hereby excluded to the fullest extent permitted by law.
- 9.2 Except in respect of death or personal injury caused by SSD's negligence, SSD shall have no liability to the Buyer in respect of the following:
 - 9.2.1. any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 9.2.2. any defect arising from fair wear and tear, willful damage, negligence, misuse or alteration or repair of the Goods without SSD's approval;
 - 9.2.3. if the total Price has not been paid by the due date for payment, or any terms and conditions have not been met by the Buyer;
 - 9.2.4. any parts, materials or equipment not manufactured by SSD;
 - 9.2.5 any representation (unless fraudulent) made by SSD;
 - 9.2.6 any other 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); or
 - 9.2.7 costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of SSD, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use for resale by the Buyer.

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- 9.3 The entire liability of SSD under or in connection with the Contract shall not exceed the Price, except as expressly provided in these Terms and Conditions.

10. RETURNS

- 10.1 Any claim by the Buyer which is based on any defect in the quantity, quality or condition of the Goods or their failure to correspond with the Specification shall be notified to SSD within seven (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 Buyer does not notify SSD accordingly, the Buyer shall not be entitled to reject the Goods and SSD shall have no liability for such defect or failure.
- 10.2 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 the Specification is notified to SSD in accordance with clause 10.3, and provided the Goods are returned to SSD's premises carriage paid SSD will in its sole discretion either: repair the Goods; replace the Goods (or the part in question); or refund to the Buyer the Price of the Goods (or a proportionate part of the price), but SSD shall have no further liability to the Buyer.
- 10.3 In order to claim pursuant to this cause, the Buyer must notify SSD in writing or by email regarding the nature of the claim, and the details of the Order, the date of delivery and any other relevant information.

11. INTELLECTUAL PROPERTY INDEMNITY

- 11.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes any intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer without the knowledge or consent of SSD, SSD shall indemnify the Buyer against all reasonable loss and damages awarded against or incurred by the Buyer in connection with the claim, provided that SSD is given full control of any proceedings or negotiations in connection with any such claim and the Buyer

shall give all assistance to SSD as it may require and take such steps as SSD may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which SSD is liable to indemnify the Buyer under this clause.

12. BUYERS INDEMNITY

12.1 The Buyer shall indemnify SSD and keep it indemnified for the duration of the Contract against all injury (including death) to any persons and any loss and/or damage as a result of any act, default or negligence by the Buyer and its employees or agents (other than SSD or its sub-contractors) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

13. INSOLVENCY OF BUYER

.1 If the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation or SSD reasonably apprehends that any of the events mentioned above is about to occur then SSD shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. INFORMATION AND DATA

14.1 Where SSD receives any data (as defined by the Data Protection Act 1998) (“the Act”) from the Buyer it shall ensure that it fully complies with the provisions of the Act and only deals with the data to fulfill its obligations under the contract.

14.2 In fulfillment of its obligations under the Act, SSD shall have such systems in place to ensure:

- (a) full compliance with the Act;
- (b) compliance with the Seventh Data Protection Principle which deals with the security of personal data; and
- (c) the reliability of all its employees who may be involved in processing the personal data.

14.3 SSD shall take all reasonable steps to ensure that all its partners, contractors and agents comply with this clause where they are processing any of the Buyer’s

data on behalf of SSD.

- 14.4 SSD shall allow the Buyer reasonable access to such information as is necessary to ensure that it is complying with the above provisions and the Act as a whole.
- 14.5 SSD shall indemnify the Buyer for any breach of the Act which renders the latter liable for any costs, claims or expenses.

15. GENERAL

- 15.1 SSD shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of SSD's obligations in relation to the Goods, if the delay or failure was due to any cause beyond SSD's reasonable control.
- 15.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that party as its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 15.3 No waiver by SSD of any breach of the Contract by SSD shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.4 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 thereby.
- 15.5 The Contract and its performance shall be governed by the laws of England, and SSD agrees to submit to the non-exclusive jurisdiction of the English court.