

TERMS AND CONDITIONS OF SALE: MONTARA LTD T/A TOTAL IMPORT SOLUTIONS

1. DEFINITIONS

- 1.1. "The Company" means Montara Ltd t/a Total Import Solutions
- 1.2. "The Customer" means the person to whom the Company may agree to sell goods in accordance with the Company's terms and conditions of sale.
- 1.3. "The goods" means the articles or things or any of them or any part of them to be provided by the Company in accordance with the Company's terms and conditions of sale.

2. GENERAL

- 2.1. Any order placed with the Company by the Customer will constitute an offer to the Company to contract upon the following express terms and conditions (the Company's terms and conditions of sale). The conditions of sale constitute the entire understanding between the parties and, save to the extent that the exclusion or restriction of liability may be prohibited by statute, all other inconsistent conditions, warranties and representations applied by law, trade, custom, practice, course of dealing or otherwise, except as to title, are hereby excluded.
- 2.2. All orders are accepted and goods supplied subject to these express terms and conditions and no variation or addition thereto, whether contained in the Customer's order, in any prior promise, representation, undertaking or understanding of any kind or otherwise shall apply unless expressly agreed in writing by the Company's authorised representative.
- 2.3. The Company may from time to time pass on enquiries or invitations to quote, received from end users, to our Re-seller partners. This is a referral of information received only and is passed on in good faith. The Company does not take responsibility for the accuracy of information, financial status or ability to pay of any enquirer. It is the sole responsibility of the Re-seller to satisfy themselves as to the nature and legitimacy of the enquiry and adequately assess any potential risk as they would with any other customer or transaction.
- 2.4. In the event of any Drop Ship delivery, the Customer shall ensure that the End User complies with the Customer's obligations as set out in these Terms and Conditions of Sale.

3. PRICE

- 3.1. The price is exclusive of VAT and is based on costs current at the date of the order acknowledgement or at the date of the Company's quotation, whichever is earlier
- 3.2. The cost of delivery is not included in the price and will be charged separately.
- 3.3. Catalogues, price lists and other advertising literature or material, as used by the Company, are intended only as an indication to price and range of goods offered and no prices, descriptions or other particulars contained therein shall not be binding on the Company

4. ORDERS

- 4.1. Sales orders are subject to availability of the goods and to written acceptance by the Company's authorized representative. There shall be no binding agreement between the parties until such acceptance takes place. Any prior confirmation by the Company by facsimile web-site, e-mail or telephone shall be deemed to be provisional only.

5. CARRIAGE AND DELIVERY

- 5.1. Except as previously agreed in writing by the Company, prices do not include delivery charges to the Customer and the Company reserves the right to levy charges for delivery to any destination advised by the Customer.
- 5.2. Delivery date(s) referred to in the Contract or in any quotation, or in any order acknowledgment, order acceptance or elsewhere are approximate only and not of any contractual effect. While the Company will use all reasonable endeavours to meet any scheduled delivery date so referred to in the Contract, it will not be liable for any loss or damage (including loss of use, loss of contract or loss of profits) incurred by the Customer as a result of any failure to deliver on any particular date.
- 5.3. The Company reserves the right to make delivery by instalments unless otherwise agreed in writing. Each delivery will be deemed to constitute a separate enforceable contract to which these terms and conditions will apply. If the Customer refuses or fails to take delivery of goods tendered in accordance with these terms and conditions, delivery will nevertheless be deemed to have taken place for the purpose of the Company's rights to payment and the Company will be entitled to store the goods at the Customer's risk and expense, including all transportation charges. Failure by the Customer to accept or pay for any instalment may be treated by the Company to deliver any one or more of the instalments. Any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the relevant contract as a whole as repudiated.
- 5.4. The Company shall have no liability to the Customer in respect of any shortages in quantities delivered against orders or in respect of goods damaged in transit before delivery unless full details of such alleged shortages or damage is notified to the Company within 3 business days except in the case of Televisions and Display Panels, where the customer must examine the goods immediately upon delivery and satisfy themselves that the products are in good condition, specifically that there is no damage to the screens and that the exterior of the products are in good condition. The Customer must then indicate this on the POD and sign the POD accordingly. The Customer must not sign the POD "unchecked" or "unexamined" or use any such similar wording. A signed POD by or on behalf of the Customer shall be conclusive evidence of delivery and (except to the extent that any damage or discrepancy is noted on the POD) that it was received in good order and condition and accordingly no claims shall be brought in respect of the delivery claiming the contrary. Alleged damage to Televisions & Display Panels must be notified to the company within 48 hours of the delivery. The Company reserves the right to reject claims of damage in transit of Televisions & Display Panels 48 hours after the goods have been delivered.
- 5.5. In the event of any Drop Ship delivery, the Customer shall ensure that the End User complies with the Customer's obligations as set out in the above clauses 5.2, 5.3 and 5.4.

6. PAYMENT

- 6.1. Unless otherwise agreed, full payment must be received in our bank prior to dispatch of goods. Payment must be made by the following means: Electronic Transfer, Bank Draft, Credit Card, Debit Card or Company Cheque.
- 6.2. The Company reserves the right to apply a surcharge for Credit Card or Debit Card.
- 6.3. The Company reserves the right to charge for any omission or additional cost arising from the provision of inaccurate, misleading or insufficient information by the Customer.
- 6.4. Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the statutory rate applicable as well after as before any judgment, and independent of such judgment. This interest will accrue on a daily basis and be payable on demand.
- 6.5. Notwithstanding the above provision for late payment, in this event the Company may, at its option, and without prejudice to any other remedy at any time after payment has become due, terminate or temporarily suspend performance of the Contract.
- 6.6. The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the goods to reflect any increase in the cost to the Customer which is due to any fact beyond the Company's control, such as, but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the goods which is requested by the Customer, or any delay caused by any instructions of the Customer or by the Customer's failure to give the Company adequate information or instructions.

7. TRANSFER OF PROPERTY

- 7.1. The Goods shall be at the Customer's risk
- i. in the case of goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the goods are available for collection; or
 - ii. in the case of goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, at the time when the Company has tended delivery of the Goods.
- 7.2. Title to the goods shall not pass from the Company until the Company has received in cash or cleared funds payment in full of the purchase price and all other sums, howsoever arising and for which payment is due from the Customer to the Company
- 7.3. Until such time as title to the goods has passed to the Customer as provided for hereunder, the Customer shall hold the goods as the Company's fiduciary agent and bailee and the Customer shall keep the goods separately from all other goods in its possession, properly stored and protected and marked in such a way that they are clearly identified as the Company's property.
- 7.4. The Customer may sell or use the goods in the ordinary course of the Customer's business after delivery but before title to the Goods has passed from the Seller to the Customer, provided that the proceeds of all such sales by the Customer shall be kept in a separate account and provided also that the Customer's power of sale shall automatically cease if:
- i. the Customer becomes unable to pay its debts as they fall due;
 - ii. (being a company), the members of the Customer resolve to wind the customer up;
 - iii. (being a company), a petition for the winding up of the Customer is presented;
 - iv. (being an individual), a petition for the bankruptcy of the Customer is presented;
 - v. (being an individual), the Customer dies;
 - vi. the Customer ceases or threatens to cease to carry on its business or a material part of its business;
 - vii. (being a company), a petition for the appointment of an examiner to the Customer is presented;
 - viii. a receiver is appointed over any of the undertaking, property or assets of the Customer; or
 - ix. the Customer enters into an arrangement or composition with or for the benefit of its creditors.
- 7.5. Until such time as title to the goods has passed from the Company, the Customer shall at the Customer's cost, upon request by the Company deliver up to the Company such of the goods as have not ceased to be in existence or re-sold. If the Customer fails to do so, the Company, its agents, employees and/or representatives may enter upon any premises owned, occupied or controlled by the Customer where the goods are situated and repossess the goods. On the making of such request, the right of the Customer to sell the goods as outlined in clause 7.3 shall cease.
- 7.6. The Customer shall not pledge or in any way charge by way of security for any indebtedness, any of the goods which are the property of the Company but if the Customer does so, all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable. The Company shall insure and keep insured the goods to their full value against all risks to the reasonable satisfaction of the Company up to the date that title to the goods passes from the Company, and shall, whenever requested by the Company, produce a copy of the policy of insurance.

8. WARRANTY

- 8.1. One year's warranty applies to all products as standard unless expressly applied by the manufacturer. Any warranty will become VOID in the following circumstances: (1) if serial Numbers are removed. (2) Damage is caused to the product by the end-user.
- 8.2. Unless otherwise notified in writing to the Customer, the Company warrants to the Customer that the Goods will be free from defects in material and workmanship for a period of a year from the date of receipt thereof by the Customer subject to the following conditions:
- i. The Company shall be under no liability for any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Company's approval;
 - ii. The Company shall be under no liability under the above warranty, otherwise, if the total price for the goods has not been paid by the due date of Payment;
 - iii. The Company shall be under no liability under the above warranty, or otherwise unless he receives written notice that the goods are defective within 14 days of such defect becoming apparent.

9. RETURNS

- 9.1. If any Goods are or become defective in accordance with section (8) herein, the Customer must obtain an RMA (Return Merchandise Authority) number from the Company for each product and, in order to do so, must have ready the invoice number related to the faulty product. The RMA number must be applied online on the Company's web-site through the customer's account log-in (Requests can be processed on-line 24 hours a day, 7 days a week). The Company will issue an RMA number based on the customer's request by email to the customer's email address that logged the RMA request. The RMA number is issued based on the understanding that the information provided (including but not limited to POP's and fault descriptions) by the customer is correct and the Company will employ and pay for a courier to collect the goods under the RMA number supplied. If any of the information provided by the customer is found to be incorrect then the products concerned will be returned to the customer and the Company reserves the right to charge the customer for inspecting, testing and shipping these returned items. If the goods under the RMA number supplied are not ready when the courier calls to collect then the onus is put on the customer to return them to the Company at their expense after this time bearing in mind that the RMA number supplied by the Company will be valid for a period of seven days from the date of issue by the Company. The Company will refuse delivery of Goods after this period. Any Goods returned must have the RMA number marked clearly on the package; this is provided by the Company on the authorisation email. The products must be returned in original undamaged packaging together with all original materials. In relation to partly returned products or products in a non-saleable condition, the Company reserves the right to charge the cost to the Customer of bringing the product to a saleable condition or a like for like swap out will be carried out. The Company will refuse delivery of any goods returned without the correct RMA number or will return these goods directly to the customer. All RMA goods must be properly packaged or damages caused by insufficient packaging will be borne by the customer. The Company will also bear the cost of returning the repaired or replacement goods to the customer. All products returned as faulty for repair or for DOA (Dead On Arrival) will be inspected and tested by the Company to the fault as supplied by the customer. If the returned product cannot be verified as having the fault as described by the customer or the product is found to meet and function at the manufacturer's specification, these products will be returned to the customer as "no fault found" and the Company reserves the right to charge the customer for inspecting, testing and shipping these returned items. Products returned in fully packaged product and verified as faulty under DOA will be replaced by the Company with a brand new product of the same model or alternatively by a model with a higher specification. The Company reserves the right to replace a returned DOA product from one manufacturer with another manufacturer's product; the Company will ensure that the replacement product is an equivalent or higher specification. All other products returned for repair outside of the DOA period will be repaired or replaced on a like for like basis. (See our Full Returns Policy Document on our web-site www.totalimports.ie).

10. EXCLUSION OF LIABILITY

- 10.1. Save as expressly provided in condition 8 above, the Company disclaims and excludes all other warranties, conditions or other terms whether express or implied in law or otherwise, and the above warranties are in lieu of all obligations and liabilities on the part of the Company for damages arising out of or in connection with the goods, including, without limitation, any warranty of satisfactory quality or fitness for a particular purpose. The Company shall be under no liability of whatsoever kind howsoever caused whether or not due to the negligence or wilful default of the Company or its servants or agents arising out of or in connection with the Goods or the contract.
- 10.2. If it should be held by a court of law in relation to any claim that paragraph 10.1 above is not effective, liability of the Company shall be limited to:
- i. The reasonable cost of remedying the breach provided that the Company shall first be afforded the opportunity of carrying out such remedial work.

- ii. Any liability of the Company for direct physical injury or death caused solely either by defects in any of the goods or by the negligence of its employees acting within the course of their employment and the scope of their authority
 - iii. Any liability of the Company for breach of its implied undertakings as to title
 - iv. Where the Customer deals as a consumer, any liability of the Company for breach of its implied undertakings as to conformity of the goods with description or sample or as to their quality or fitness for a particular purpose.
- 10.3.** Subject to clauses 10.2(i) and 10.2(ii), the Company's liability for any breach of these terms and conditions or the Contract will be limited to a refund of the Charges paid by the Customer for the Products. In no event will the Company be liable for any costs of procurement of substitute products.
- 10.4.** Except as otherwise expressly stated in these, the Company's terms and conditions of sale, the Company disclaims all liability to the Customer in connection with these terms and conditions including the Customer's use of the goods, and in no event will the Company be liable to the Customer for indirect or consequential damages or for loss of profits or arising from loss of data.

11. SOFTWARE PROGRAMS

- 11.1.** Copyright software programs supplied by the Company (whether independently of or in conjunction with the Goods) shall remain vested in the Company or the owner thereof (as the case may be). The Customer shall not reproduce or adapt such software programs (in whole or in part) without prior written consent of the Company.
- 11.2.** The Company makes no warranty that Software programs shall be free from errors or viruses.
- 11.3.** The Company will have no liability under this clause for:
- i. any infringement arising from the combination of goods supplied by the Company with other goods not supplied by the Company; or
 - ii. the modification of the goods unless the modification was made or approved expressly by the Company; or
 - iii. supplying the Customer with any information, data, service or application assistance
- 11.4.** In no circumstances will the Company be liable for any costs or expenses incurred by the Customer in respect of any intellectual property right infringement of the goods if such act/s of infringement is/are carried out without the Company's express authorisation

12. FORCE MAJEURE

- 12.1.** The Company shall not be under any liability of whatsoever kind for non-performance in whole or in part of its obligation under the contract due to causes beyond the control either of the Company or the Company's suppliers including but not limited to war (whether an actual declaration is made or not), sabotage, insurrection, riot or other act of any Civil Disobedience, Acts of the Customer or a third party, failure or delay in transportation, acts of any Government or any agency or subdivision thereof, Government regulations. Judicial actions, labour disputes, strikes embargoes, illness, accident, fire, explosion, flood, tempest or other acts of God, delay in delivery to the Company or the Company's supplier or shortage of labour, fuel, raw materials or machinery or technical failure. In any such event, the Company may, without liability, cancel or vary the terms of the contract including but not limited to, extending the time for performing the contract for a period at least equal to the time lost by reason of such event.

13. BREACH AND FINANCIAL CONDITIONS OF CUSTOMER

- 13.1.** If any of the Customer's obligations to the Company under this or any other contracts are not fulfilled or if the Customer's financial condition at any time does not, in the Company's unfettered judgment, justify continuance of the contract on the terms of payment specified, the Company may, without prejudice to any other rights it may have, cancel or suspend any outstanding order or any deliveries or manufacture of any of the goods unless the Customer makes such payment for any of the goods ordered as the Company may require.
- 13.2.** If an order or delivery is so cancelled or suspended by the Company, the Customer shall indemnify the Company on demand against all losses (including loss of profit) costs (including the costs of all labour and materials used and overheads incurred) damages, charges and expenses arising out of the order and the cancellations of suspension thereof (the Company giving credit for the value of any such materials sold or utilised for other purposes). The Company will not entertain the cancellation of any orders where the product concerned is ordered specifically for the customer. The Company to do so, for example, where the Customer is unable to pay its debt in time or where the Customer is unable to carry on business. In this instance, the Company will only take back stock that is in a resale able condition. A credit note will be issued for stock returned at the lesser of the following:
- i. Original price less 15% re-stocking fee
 - ii. The net realisable value of the stock.

14. INDEMNITY

- 14.1.** The Customer shall comply with all instructions of the Company and all legislation in relation to the use, processing, storage and sale of goods and shall indemnify the Company against any cost, claim, demand, expense or liability which the Company may incur arising out of or in connection with such use, processing, storage or sale.

15. ASSIGNMENT

- 15.1.** The customer shall not assign or transfer or purport to assign or transfer the contract or the benefit thereof to any other person.

16. SUB-CONTRACTS

- 16.1.** The Company reserves the right to sub-contract the performance of contract or any part thereof.

17. ARBITRATION

- 17.1.** In the event of a dispute arising which is not satisfactorily resolved, the Company reserves the right to refer such dispute to arbitration with the Arbitrator to be appointed by the Law Society of Ireland

18. SEVERABILITY

- 18.1.** If any of the foregoing provisions of is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

19. PROPER LAW AND JURISDICTION

- 19.1.** The contract shall be governed by and construed in accordance with Republic of Ireland law and the Courts of the Republic of Ireland shall have non-exclusive jurisdiction to hear all disputes arising in connection with the contract.

20. HEADINGS

- 20.1.** The headings of these conditions are for convenience only and shall have no effect on the interpretation thereof.