

**STANDARD TERMS AND CONDITIONS OF SALE**

**BUFFALO TECHNOLOGY UK LTD**

**1. INTERPRETATION**

In these Conditions:

"**You**" means the person, firm, body or company who buys the Goods under the Contract

"**Goods**" means the goods (including any installment of the goods or any parts for them) which BUFFALO is to supply under the Contract

"**Conditions**" means the standard terms and conditions of sale set out in this document.

"**Contract**" means the contract for the purchase and sale of the Goods as confirmed by an order verification from BUFFALO to You

"**BUFFALO**", "**We**" or "**Us**" means BUFFALO TECHNOLOGY UK LTD (company number 02514456) whose registered office is at Somers, Mounts Hill, Benenden, Kent, TN17 4ET

"**Working Day**" means the hours between 0900 hours and 1700 hours on any day of the week excluding Saturdays, Sundays and public holidays in the UK or Republic of Ireland

"**Writing**" includes facsimile transmission and electronically transmitted data.

**2. SALE**

2.1 We shall sell the Goods to You only on the basis of a written purchase order accepted by Our order verification, which is subject to these Conditions.

2.2 The quantity of the Goods shall be those specified in the order verification from Us.

2.2.1 the order verification will specify the quantity of the Goods available for delivery at the time of sending out the order verification;

2.2.2 the order verification will confirm that any balance of the Goods will follow at a later date and availability and any pricing amendments will be confirmed by a subsequent order verification;

2.2.3 in such circumstances You may cancel the order in full or cancel the order for the balance of the Goods by giving notice to Us in writing within five working days from the date of receiving the original order verification provided that the Goods have not by that date been dispatched to You.

2.3 These Conditions shall govern the Contract to the exclusion of any other terms or conditions.

2.4 Any variation to these Conditions must be agreed in Writing between You and Us. Our agreement must be signed by one of our Directors or our Financial Controller

2.5 Any advice or recommendation relating to the Goods given by any of Our representatives will not be binding on Us unless confirmed by Us in Writing.

**3. ORDERS AND QUOTES**

- 3.1 In accepting a quote or placing an order for the Goods You acknowledge that all information and specifications relating to the Goods and any material produced by Us are approximate only.
- 3.2 Any error or omission in any document issued by Us may be corrected without any liability to Us.
- 3.3 Any order placed by You shall only give rise to a Contract once it has been accepted by Our order verification.
- 3.4 All orders submitted by You must be accurate and made in good time to allow Us to perform our obligations under the Contract.
- 3.5 We may make any changes in the specification of the Goods to conform with any statutory or European Union requirements or, where the Goods are to be supplied to Your specification, which do not materially affect their quality or performance.

#### **4. PRICE**

- 4.1 The price of the Goods shall be as stated in the Our order verification, accepting Your written order or in the case of 2.2.2 above the date of the subsequent order verification.
- 4.2 We may by giving notice to You at any time before delivery, increase the price of the Goods to reflect any increase in the cost of supplying the Goods which is due to any factor beyond the Our control.
- 4.3 The price of the Goods does not, unless otherwise agreed, or the order is for in excess of USD 5,000, include delivery and accordingly all prices are ex works BUFFALO's premises. You agree to pay Our reasonable charges for transport, packaging and insurance. (Unless otherwise agreed in writing).
- 4.4 The price for the Goods is exclusive of local sales taxes.
- 4.5 No price protection scheme shall apply to the Contract unless expressly agreed by the parties in Writing.

#### **5 PAYMENT TERMS**

- 5.1 We will invoice You for all sums due under the Contract after We have dispatched the Goods.
- 5.2 You will pay Our invoices in full by bank transfer, in the currency invoiced, without deduction or set-off within 30 days of the date of invoice or as otherwise agreed by Us in Writing. All costs associated with the bank transfer shall be paid by You. Time for payment shall be of the essence of the Contract.
- 5.3 If You fail to pay on the due date then We (notwithstanding that delivery may not have taken place and that title to the Goods may not have passed to You) may: -
  - 5.3.1 sue You to recover the sums due to Us;
  - 5.3.2 terminate the Contract;
  - 5.3.3 suspend any further deliveries to You until all sums are paid in full;
  - 5.3.4 charge You interest (both before and after any judgment) on the amount unpaid, at the rate of 12 (twelve) per cent per year; and

5.3.5 by giving notice in Writing to You, cancel any other contract between You and BUFFALO.

## **6 DELIVERY**

6.1 The time and place for delivery shall be as requested in Your order or as otherwise agreed in writing. If no place for delivery is specified then delivery shall be made by You or Your agents collecting the Goods from Our premises. Where delivery is otherwise than at Our premises, We shall be under no obligation under Section 32(2) Sale of Goods Act 1979.

6.2 Any dates for delivery are approximate only and We will not be liable for the consequences of any delay in delivery. Time for delivery shall not be of the essence. The Goods may be delivered early by Us provided that we give 2 Working Day's notice to You.

6.3 If there is short delivery:-

6.3.1 You will inform Us in Writing within 2 Working Days from the date of delivery. If you do not then We will not be responsible for any loss or damage suffered by You as a result of the short deliver;

6.3.2 all Goods and packaging shall be held by You to Our order, and shall be dealt with in accordance with Our written instructions;

6.4 Our liability shall in any case be limited to the price of the Goods not delivered.

## **7 STOCK**

8 No stock rotation scheme shall apply to the Contract unless expressly agreed by the parties in Writing.

## **9 RISK**

9.1 Risk of damage or loss of the Goods shall pass to You

9.1.1 On delivery to Your premises where Goods are despatched CIF.

9.1.2 On despatch from Our designated warehouse where goods are despatched Ex works.

## **10 RETENTION OF TITLE**

10.1 Title in the Goods shall be retained by Us until all sums due on any account from You to Us have been received by Us. If any indebtedness on any running account between BUFFALO and You is reduced to nil, title shall not pass in any Goods still held by You at the time of any later default in payment by You.

10.2 Until title passes to You, You will keep the Goods separate from Your own goods or those of third parties and properly stored, protected, insured and identified as Our property.

10.3 If the Goods are destroyed before You pay in full for any of the Goods, You will hold the proceeds of any insurance claim relating to the Goods as trustee for Us and shall pay the proceeds to Us immediately.

10.4 You may sell the Goods on Our behalf on reasonable commercial terms as Our agent and will be liable to account to Us for any proceeds of sale. As between You and any sub-purchaser, You shall act as principal.

- 10.5 You will, as fiduciary agent for BUFFALO, pay the proceeds of any sub-sale equivalent to the invoice value of the Goods into a separate bank account clearly denoted as an account containing monies deposited for the benefit of BUFFALO and You will supply details of that account to Us.
- 10.6 You will, on request, give Us details of any sub-sale and shall assign any claims or causes of action that You have against a sub-purchaser to BUFFALO.
- 10.7 If the Goods are mixed with any products or materials, You shall have no interest in the resulting product ("the Product"). BUFFALO shall be the owner of the Product, or (in the case of products or materials contributed by a third party) BUFFALO shall be joint owner of the Product with the third party to the extent of the parties' contributions to the Product. You shall treat the Product as if it were the Goods.
- 10.8 Until ownership in the Goods passes to You, We may require You to deliver the Goods to Us and, if You fail to do so immediately, we may enter any premises where the Goods are reasonably thought to be stored and repossess the Goods.
- 10.9 If We recover the Goods We may resell the Goods. If the proceeds of sale are more than the amount due to Us from You, We may use the balance to pay the costs of taking possession and selling the Goods. If on resale the proceeds of sale are less than the amount due to Us, We may recover the shortfall from You.
- 10.10 You will not assign, factor or charge any of the Goods or any invoice for the Goods, which remain Our property. . If You do then all monies owing by You to Us shall become due and payable immediately.
- 10.11 You shall not be deemed to be Our agent for any purpose other than to give effect to this clause 10.

## **11 INTELLECTUAL PROPERTY**

- 11.1 All intellectual property and other proprietary rights (including, but not limited to, copyright and trademarks) and all technical, business or similar information (including but not limited to, all designs, documents and other materials relating to the Goods) created by BUFFALO during the course of the Contract shall be, and shall remain, exclusively Our property.
- 11.2 If a claim is made against You that the Goods (or their use or resale) infringe intellectual property rights of any other person, We will indemnify you against all loss or damage suffered by You in connection with the claim, provided that:
- 11.2.1 You immediately inform Us of the claim;
- 11.2.2 We are given full control of any proceedings or negotiations;
- 11.2.3 You give Us all reasonable assistance in any proceedings or negotiations;
- 11.2.4 You do not pay or accept any claim, or compromise any proceedings, without Our consent in Writing;
- 11.2.5 You do nothing which may affect the validity of any insurance policy which You may have in relation to the infringement, and this indemnity shall not apply to the extent that You recover any sums under any insurance policy (which You will use its best endeavours to do);
- 11.2.6 You will account to us for all damages and costs (if any) awarded in your favour which are to be paid to it by any other party in respect of any such claim;

11.2.7 You will take all steps that We may reasonably require to mitigate or reduce its loss as a result of a claim; and

11.2.8 this indemnity shall not extend to infringements resulting from the use or adoption by BUFFALO of Your parts, designs, specifications or specific instructions and You will indemnify Us against any loss or damage suffered by Us in connection with any claim for infringement of any intellectual property resulting from the design, manufacture, use or supply of the Goods.

## 12 CONFIDENTIALITY

12.1 You will keep the Contract confidential and shall not disclose details of it to any third party without Our prior consent in Writing. You agree not to copy or disclose to any third party any drawings, price details or other technical papers supplied by Us under this Contract which will remain Our property and must be returned to Us on demand.

## 13 WARRANTY AND LIABILITY

13.1 Nothing in this clause 13 shall exclude Our liability for death or personal injury caused by Our negligence.

13.2 BUFFALO warrants that (unless otherwise stated on the Goods or their packaging or documentation) all Goods, excluding consumables and software, will be free from material defects for a period of the useful life of the product into which the Goods are incorporated and which is expected to be a minimum of 12 months from the date of delivery provided the Goods have been used strictly in accordance with the specification issued by the manufacturer of the product into which the Goods are incorporated and in accordance with any documents supplied with the Goods. Details of products and their likely useful life are available from BUFFALO.

13.3 If We are in breach of the warranty contained at 13.2 (including Goods which are D.O.A.), You will advise Us in Writing immediately and in any case not later than 30 days from the date of discovery of the defect.

13.4 On receiving a notice under clause 13.3, We may, at Our sole option:-

13.4.1 repair the Goods;

13.4.2 replace all or any part of the defective Goods; or

13.4.3 refund the current price as at the date of receipt by Us of the notice under clause 13.3 of those Goods, which are defective. The cost of the defective Goods shall be the lesser of the original purchase price or the purchase price of the replacement Goods as at the date of receipt by Us of the said notice.

13.5 The warranty contained in clause 13.2 shall be the extent of Our liability for defective Goods.

13.6 Save as expressly provided in these Conditions, all implied warranties or conditions are excluded to the fullest extent permitted by law and We will not be liable to You for any loss of any kind whatsoever which arises out of the breach of implied warranties or conditions or breach of any other duty of any kind imposed on Us by operation of law.

13.7 We will not be liable for any of the following losses which may arise by reason of any breach of the Contract or any implied warranty, condition or other term, any representation or any duty of any kind imposed on Us by operation of law:

13.7.1 any loss of or destruction of data or any reconstitution thereof;

- 13.7.2 any loss of anticipated profits or expected future business;
- 13.7.3 damage to reputation or goodwill;
- 13.7.4 Any damages costs or expenses payable by You to any third party;
- 13.7.5 Loss of any order or contract; or
- 13.7.6 Any consequential loss of any kind.

13.8 Unless otherwise provided in these Conditions, and subject to clause 13.3, the liability of BUFFALO for breach of any express or implied term of this Agreement shall be limited to the reasonable cost of remedying any defect in the Goods or other matter constituting a breach and in no circumstances shall Our liability exceed the total amount paid by You to Us under the Contract.

13.9 If, notwithstanding the provisions of this clause 13, liability attaches to Us in no circumstances shall Our liability to You for a breach of any express or implied terms of the Contract or any other duty of any kind imposed on Us by law arising out of or in relation to the Contract exceed £2,000,000 (two million pounds sterling).

Without prejudice to any other provision of this clause 13, We will not be in breach of the terms of the Contract for any delay in performing, or failure to perform, its obligations under the Contract if that delay or failure was due to any cause or circumstance beyond Our reasonable control.

#### **14 INDEMNITY**

14.1 You shall indemnify Us against any loss or damage suffered by Us as a result of any claims brought against Us by any third party for:-

- 14.1.1 any loss, injury or damage caused by the Goods or their use;
- 14.1.2 any loss, injury or damage in any way connected with this Contract provided that this Clause will not require You to indemnify Us against any liability for Our own negligence.

#### **15 EXPORT TERMS**

15.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chambers of Commerce in force on the date when the Contract is made. Unless the context otherwise requires, any expression which is defined in Incoterms shall have the same meaning in these Conditions, but if there is any conflict between Incoterms and these Conditions, these Conditions shall prevail.

15.2 Where the Goods are supplied for export from the United Kingdom, if the provisions of this clause 15 are inconsistent with any other provision of the these Conditions, the provisions of this clause 15 shall prevail.

15.3 You shall be responsible for complying with any legislation or regulation governing the importation of the Goods into the country of destination and for the payment of any duties.

15.4 You shall where applicable: -

15.4.1 not either directly or indirectly export the Goods or any product incorporating the Goods without first obtaining a licence to export or re-export from the United Kingdom Government and/or the United States Office of Export Administration (the "OEA");

15.4.2 comply with the export regulations of the United Kingdom Government and/or the OEA.

15.5 The Goods shall be delivered CIF for orders over USD 5,000 unless otherwise agreed in writing.

## **16 TERMINATION**

16.1 We may terminate the Contract or any other contract between the parties and may cancel or suspend future deliveries (under this Contract or any other contract) if You:-

16.1.1 are in breach of these Conditions or any other contract between the parties; or

16.1.2 have a petition presented for its winding up or for an administration order to be made in respect of it; has a receiver or administrative receiver appointed over it or any of its assets; resolves to wind itself up (other than for a solvent reorganisation); has a bankruptcy order made against it or any of its partners; or enters, or proposes to enter into a composition or voluntary arrangement with its creditors.

16.2 On termination, You will pay Us all costs, expenses (including legal and other fees incurred), arrears, charges or other payments arising in respect of the Goods under the contract.

16.3 Termination shall not affect either party's accrued rights under the Contract.

## **17 WITHDRAWAL AND USE OF GOODS**

17.1 BUFFALO may withdraw the sale or distribution of any goods produced by or generally supplied by Us without prior notice, or liability, to You.

17.2 If We provide You with information about the use for which the Goods are designed and about any conditions necessary to ensure that the Goods will be safe then You shall use the Goods accordingly.

## **18 GENERAL**

18.1 Any notice required under these Conditions shall be in Writing addressed to the other party at its registered office or principal place of business or any other address notified by the receiving party to the party giving the notice. Any notice shall be deemed to be served:-

18.1.1 if sent by pre-paid first class post to the party to whom it is given, on the second Working Day after posting; or

18.1.2 if sent by e-mail to the recipient's e-mail address at the date and time given on the sender's print out) on receipt.

18.1.3 If sent by facsimile on the day of transmission provided that a confirmatory copy is sent by pre-paid post on the same day that the facsimile is transmitted.

18.2 If any of these Conditions is held by any competent authority to be unlawful, invalid or unenforceable in whole or in part then the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.

18.3 The Contract and these Conditions shall be under English law and the parties submit to the exclusive jurisdiction of the English Courts if there are any disputes between them of any kind.

18.4 You shall not transfer, assign or sub-contract its obligations under the Contract without Our prior consent in Writing.

18.5 Failure or neglect by Us to enforce at any time any of these Conditions shall not be a waiver of Our rights and it shall not affect the validity of the whole or any part of these Conditions or prejudice Our right to take subsequent action.