

**GALLEON SYSTEMS LIMITED**

**STANDARD TERMS AND CONDITIONS OF SALE (1ST August 2019 until further notice)**

**ALL ORDERS ARE ACCEPTED SUBJECT TO OUR STANDARD TERMS AND CONDITIONS OF SALE, A COPY OF WHICH IS REPRODUCED BELOW**

**1. DEFINITION**

In these conditions the following expressions shall, where the context so admits, have the following meanings:

'overseas' all countries other than the United Kingdom (as defined).

'United Kingdom' United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.

'the goods' the goods which are the subject of this contract of sale or supply between us and the customer.

'business day' any day other than a Saturday, Sunday, or a day which is a public or Bank Holiday in the United Kingdom.

**2. ACCEPTANCE AND VARIATION OF CONDITIONS**

The following conditions and the provisions of the Sale of Goods Act 1979, as amended by the Sale and Supply of Goods Act 1994 and not inconsistent with them, shall apply to all our contracts with customers except to the extent that they are varied in writing in the express terms of the contract.

No alteration, variation, amendment or addition to these conditions shall be valid unless made in writing and signed by one of our directors.

If the terms and conditions stated in the customer's order are inconsistent with the conditions, or if they contain a provision purporting to override these conditions, our Sales Order acknowledging the customer's order shall constitute a counter-offer. The contract shall come into being when the customer has accepted our counter-offer either expressly or impliedly. If the customer, after receiving our counter-offer, notifies us that it does not accept these conditions, then the formation of a contract shall be subject to negotiation.

The customer agrees that in entering into this contract it does not rely upon any express or implied representation made by any of our employees or agents or any representations made in any of our sales/promotional literature and that such representations shall not form part of the contract or a collateral contract. We reserve the right to change products and specifications at any time without notice. Images may or may not include optional equipment.

**3. PRICES**

We shall be entitled to take into account fluctuations in the cost of materials, components, labour and services, including services provided to us (such as gas, electricity, water etc.) at the date of despatch of the goods. Where a contract is for the sale of goods by a number of separate deliveries, we shall be entitled to take fluctuations in such costs into account up to the date of despatch of each delivery unless otherwise agreed in writing. Unless otherwise stated, freight and insurance will be charged to the customer at rates ruling on the day of despatch of the goods.

**4. TAXES AND CUSTOMS DUTIES**

The price shall be exclusive of any value-added, sales, excise, customs or other tax or duty payable on the sale of the goods, which shall be paid by the customer in addition to the price for the goods.

Any customs duties or other charges, fines or assessments whatsoever levied on overseas customers in respect of the goods on importation shall be borne by such customers.

**5. QUANTITIES**

Although we shall use our best efforts to supply the exact quantity of goods ordered, where the goods are liquid or powdered then the customer shall accept the supply of a quantity (whether more or less) within 5 per cent of the stipulated amount of its order. In such circumstances the invoice value of the goods shall be subject to a corresponding adjustment.

The prices quoted are for the quantities and despatch conditions stipulated in our Quotation and do not necessarily apply to other quantities or to different conditions of despatch.

**6. DELIVERIES**

6.1. On the request and at the cost (including insurance) of the customer, we may at our discretion, arrange transport to the customer's premises;

6.2. The customer shall, at times agreed by us, either:

6.2.1. collect the goods from our premises; or

6.2.2. if we agree to transport the goods to the customer's premises, take delivery of them; and

6.2.3. the customer shall give us all necessary information and assistance to effect a delivery.

6.3. Delivery shall take place when:

6.3.1. the customer collects the goods ex-works; or

6.3.2. the goods are transported by us and they are unloaded at the customer's premises or other site designated by the customer.

6.4. We may deliver by instalments in such quantities as we may reasonably decide. Each delivery shall be invoiced separately and shall be regarded as a separate contract. A breach affecting one delivery shall not affect any other, provided that for so long as payment for any delivery has become due and is unpaid, we shall not (without prejudice to our rights under condition 20) be liable pending payment to make any further delivery pursuant to the contract and the customer shall not be able to cancel any future instalment or repudiate the contract as a whole.

6.5. The customer shall take possession of the goods within any agreed delivery schedule and, without affecting any other of our rights, shall reimburse us for any costs incurred (by way of storage, insurance, transport or otherwise) as a result of any variation or delay in delivery caused by the customer.

**7. DESPATCH DATES**

7.1. Although we shall use reasonable efforts to meet our despatch forecasts, however such forecasts are estimates only and accordingly time for delivery shall not be of the essence. We shall not be liable in any circumstances for loss, whether direct, indirect or consequential, arising from delay in despatch.

7.2. The customer shall not cancel an order by reason of any delay in delivery and/or short delivery.

7.3. In the case of orders for despatch overseas, despatch shall be conditional upon all necessary governmental or other consents governing the importation of goods into the country of destination being obtained by the customer and furnished to us prior to despatch.

**8. WITHHOLDING OF DELIVERY**

We shall be entitled without prejudice to any of our other remedies to withhold delivery of any goods if either:

8.1. any amount is outstanding and overdue from the customer in respect of any invoice issued by us; or

8.2. upon the invoicing of such goods, the customer's credit limit (if any) with us would thereby be exceeded.

In determining the customer's credit limit for such purposes the aggregate invoice value of all invoices issued to the customer by us and which are outstanding at that time, including unpaid accounts, shall be taken into account.

**9. PASSING OF RISK**

All goods, from the moment of despatch, are travelling for the account and risk of the customer.

**10. PASSING OF OWNERSHIP**

10.1. Notwithstanding delivery of the goods to the customer and/or the passing of risk in the goods to the customer, until we have received full payment from the customer for all goods delivered to the customer, the following terms shall apply:

10.1.1. The property in the goods supplied by us shall remain in us as legal and equitable owner and the customer shall be entitled to possession of the goods only which shall be held by the customer as a bailee on our behalf and the customer shall store the goods in such a way as to be identifiable as our property;

10.1.2. The customer shall keep the goods insured against all risks in their full replacement value and if requested by us shall execute an assignment in favour of us of all rights of the customer to claim against the insurers in respect of the goods covered by such insurance and shall join us in notifying such insurers of our interest in any policy effected hereunder;

10.1.3. Notwithstanding the provisions of condition 10.1.1. the customer shall have a licence to sell (by way of bona fide sale at arm's length) the goods supplied by us to the customer which licence may be immediately terminated by us at any time by giving the customer written notice thereof provided that (without prejudice to any other right of ours) such licence shall automatically terminate if the customer (being an individual) becomes bankrupt or if the customer (being a company) adopts a resolution for its winding up or if any petition is presented for the appointment of an administrator or a receiver or an administrative receiver is appointed in respect of any part of the customer's undertaking or assets or if the customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (or any re-enactment or further enactment thereof) unless we otherwise agree to the continuation of such licence;

10.1.4. The proceeds of any such sale and the benefit of any such contract of sale shall be held in trust for us absolutely and the customer shall forthwith pay all proceeds of such sales (but only to the extent of sums referred to us by the customer) into a bank account in its own name separate from all other monies of the customer and shall notify us thereof and the bank of our interest in such account. The proceeds of such sales paid into such bank account by the customer shall not be used by the customer but shall immediately be paid to us and notwithstanding that any period of credit extended to the customer by us (under this or any other contract) shall not have expired;

10.1.5. At any time after the termination of the above licence we may repossess the goods and for this purpose the customer grants to us an irrevocable licence to enter upon any premises of the customer, its servants or agents and to use such measures as may be reasonably necessary to gain access to such premises and recover possession of the goods.

10.1.6. We or any person nominated by us shall at any time have full access to all the books of account and documents and papers of the customer relating to any one or more of the following:

10.1.6.1. the customer's dealings with us;

10.1.6.2. the customer's dealings with the goods;

10.1.6.3. the customer's dealings with the proceeds of sale of the goods.

10.2. Nothing in this condition shall confer any right upon the customer to return the goods or to refuse or delay payment for them.

10.3. For the avoidance of doubt nothing in this condition shall be construed as creating a lien or charge or any other form of security over any property of the customer or any third party.

**11. INSURANCE FOR OVERSEAS CONSIGNMENTS**

Where requested to do so by the customer, we shall on the customer's behalf arrange insurance to destination on every consignment of goods overseas at the customer's expense. Unless otherwise stated, the premium paid will cover the value of the consignment as shown on our invoice. Details of the insurance cover are available upon request. The arrangement of any additional insurance required by the customer is the customer's responsibility.

**12. DAMAGE IN TRANSIT AND NON-DELIVERY' (applicable in UK only).**

Where the risk in the goods has not passed to the customer, we will accept responsibility:

12.1. for damage in transit (by repairing or at our option replacing the goods) provided that we are given written notice of such damage within such time and in such manner as will enable us to comply with the carriers conditions of carriage applicable to damage in transit and are given the opportunity to inspect the goods and on the condition that the customer shall make no further use of the goods and will not attempt to alter or repair the goods itself; and

12.2. for non-delivery (by at our option recovering or replacing the goods within a reasonable time) provided that where we have notified the customer of despatch of the goods we are given written notice of non-delivery within such time and in such manner as will enable us to comply with the carrier's conditions of carriage applicable to non-delivery.

**13. PAYMENT BY CUSTOMERS IN THE UNITED KINGDOM**

Unless credit terms are otherwise stipulated or have previously been agreed by us in writing payment in full is due upon presentation of the invoice by cheque or by bank credit transfer in accordance with condition 14.2. below. Time for payment is of the essence.

**14. PAYMENT BY CUSTOMERS OVERSEAS**

14.1. Unless credit terms are otherwise stipulated or have previously been agreed by us in writing payment in full is due upon presentation of the invoice in the currency stated thereon. Time for payment is of the essence.

14.2. Unless otherwise stipulated payment should be made in the currency invoiced by us (Pounds Sterling, Euros or US Dollars) by bank credit transfer to the appropriate account at National Westminster Bank Plc, 1660 High Street, Knowle, Solihull, West Midlands, B93 0LJ, United Kingdom. Bank Code: 53-61-41, Account Number: 29237025 (Pound Sterling account), Account Name: Galleon Systems Limited. The customer shall immediately inform us in writing of the bank credit transfer details.

14.3. Where we agree that payment may be made by irrevocable confirmed letter of credit, confirmation is required by a London clearing bank.

14.4. The customer must make payment without deduction, set-off or counterclaim whatsoever and all payment and transfer charges shall be borne by the customer.

**15. FAILURE TO PAY**

If the customer fails to make payment when due, the amount unpaid may, in our sole discretion, incur interest at the rate of 8 per cent per annum above the base rate of National Westminster Bank Plc from time to time from the date of the invoice to the date of actual payment (both before as well as after judgement).

In the event where an overdue account is referred to a collection agency and/or law firm the customer will be liable for all costs which would be incurred as if the debt is collected in full, including commission on collection of the additional costs and also including legal demand cost.

#### 16. GENERAL LIEN

Without prejudice to any other remedies we may have in respect of unpaid debts due to us from customers we shall have a general lien on all such customers' goods or property in our possession (whether worked on or not) and we shall be entitled on the expiration of 21 days' notice in writing to the customer to dispose of such goods or property as we think fit and to apply any proceeds received towards such debts.

#### 17. CONTAINERS

Any carboys, de-mountable tanks, drums, cases, boxes or any other type of packaging charged for by us must be paid for in full and carboys and de-mountable tanks will only be re-purchased by way of credit less a cleaning charge, if returned to us in a reusable and uncontaminated condition within 6 months of the date of delivery carriage paid. Failing this the credit will be forfeited and the carboys and de-mountable tanks will become the property of the customer. All other containers and transportation equipment that accompany the goods shall remain our property. We also reserve the right to charge for containers rendered unfit for further use.

#### 18. SUITABILITY AND FITNESS

18.1. Although we use every effort to ensure that all goods are manufactured to specification and reasonably free from defects, it is in all cases, including repeat orders, for the customer to ensure by tests or otherwise, that the goods are fit and suitable for the purpose for which the customer requires them in the conditions in which they will be used. We accept no liability for misuse of the goods or failure of the customer to carry out its statutory obligations.

18.2. Any customer who claims that goods are defective as regards materials or workmanship must give us written notice to that effect within 7 days and, if requested by us, return the goods to us properly packed, carriage paid within 14 days of the date of receipt of the goods and in such notice give details of the alleged defect.

18.3. We shall, in our sole opinion, replace goods or repair at one of our factories goods that we accept, in our sole judgement, are defective either as regards materials or workmanship provided that they have not been tampered with or subjected to improper treatment and provided that the defects are not as a result of faulty design or incorrect specification by the customer. Goods returned to us and replaced shall become our property.

18.4. Under no circumstances shall we be under any liability for negligence or for any direct loss, damage or injury to the customer (other than for death or personal injury caused by our negligence) and our liability to the customer shall not under any circumstances exceed the purchase price of the goods.

18.5. Under no circumstances shall we be under any liability for any indirect, contingent or consequential loss, damage or injury to the customer, howsoever arising.

18.6. We shall not be under any liability in respect of any claim made against the customer by any third party and the customer shall indemnify us against any claims brought by third parties against us relating to the goods.

18.7. For the avoidance of doubt, the warranty in clause 18.1 does not apply to damage caused through fire, accident, misuse, neglect, incorrect storage and handling, incorrect adjustment or repair, to damage caused by installation, adaptation, modification, or use in an improper manner or inconsistent with the technical and/or safety standards applicable in the country where the goods are used, or to damage occurring during transit to and from the customer. The warranty does not cover periodic checks, maintenance, repair, and replacement of parts due to normal wear and tear. Replaced or repaired goods shall carry a warranty for the balance of the period remaining under the original warranty. Replaced parts on goods shall become our property.

This condition is in substitution for and (to the extent permitted by English law) excludes all conditions, warranties and terms as to satisfactory quality and fitness whether express or implied and whether conferred by statute, common law or otherwise.

#### 19. CONFIRMATION ORDERS

To avoid orders being duplicated, all purchase orders that are merely confirmations of orders previously placed must clearly indicate that fact, for example, by being prominently over-stamped 'Confirmation Order Do Not Duplicate'. We reserve the right to treat any confirmation order that is not so marked as a separate order.

#### 20. CANCELLATION OR VARIATION BY CUSTOMERS

20.1. For standard products if the customer partly or completely cancels the given order there will be a minimum cancellation charge of 40%, this may be larger depending on any expenses incurred. It is obliged to compensate us with all expenses, which have been reasonably made with regard to the execution of this order; all this without prejudice to our right to compensation because of loss of profit or other damages resulting from the cancellation concerned.

20.2. For customised products if the customer partly or completely cancels the given order there will be a minimum cancellation charge of 80%, this may be larger depending on any expenses incurred. It is obliged to compensate us with all expenses, which have been reasonably made with regard to the execution of this order; all this without prejudice to our right to compensation because of loss of profit or other damages resulting from the cancellation concerned.

20.3. If work on an order is suspended because of the customer's instructions or lack of instructions, we reserve the right to treat such circumstances as a cancellation by the customer and the provisions of clause 20.1 and 20.2 shall apply.

#### 21. CANCELLATION BY US

We shall be entitled to cancel the contract by written notice and to suspend all future deliveries without prejudice to any other rights that we may have if:

21.1. the customer shall go into liquidation or be declared bankrupt

21.2. the customer shall have an administration order made against it;

21.3. a distress or execution is levied or enforced upon any of the property or assets of the customer and is not paid out or discharged within 14 days;

21.4. an encumbrancer takes possession or a receiver is appointed over the undertaking of the customer or any of its property or assets; or

21.5. the customer stops payment or ceases or threatens to cease to carry on its business or to pay its debts as and when they fall due.

#### 22. FORCE MAJEURE

22.1. In case of force majeure we shall, without applying to the court, have the right to prolong the term of delivery of the goods with duration of the force majeure, or to cancel the agreement, so far not being executed, without in either case being liable to pay compensation.

22.2. By force majeure is meant: any circumstance, independent of our will, impeding fulfilment of the agreement temporarily or permanently. Among other things as circumstances as meant above are to be considered: restricting measures of the authorities; epidemics; mobilisation; war; revolution; seizure; interruption of the production; lack of raw materials; semi-manufactured products, auxiliary materials and energy; non-delivery, untimely or non-sufficient delivery by the company, from which we obtain the goods; strike; fire with us or our supplier.

#### 23. INTELLECTUAL PROPERTY

23.1. We accept no liability (to the extent permitted by English law) for any claims made against a customer for any infringement of patent, registered or unregistered designs, copyright, trade names, trade marks or other intellectual property rights of any third party in connection with the use, possession, resale or offering for resale of the goods either as originally sold by us or otherwise.

23.2. Where we execute the order in accordance with the customer's designs, plans, specifications, data or software, the customer warrants that it has the authority to supply and to authorise us to use such designs, plans, specifications, data or software, further the customer shall indemnify us against all actions, losses, damages, expenses, costs or other liabilities (including legal fees) arising from any claims made against us for infringement of any third party's patent, registered or unregistered designs, copyright, trade names, trade marks or other intellectual property rights arising therefrom.

23.3. Nothing contained herein shall be construed as, or operate to grant, any licence to the customer in respect of any of our existing or future patent rights, registered or unregistered designs, copyright, trade names, trademarks or other intellectual property rights.

23.4. No information contained within our technical and sales literature or safety data sheets, including suggestions of uses, should be taken as inducements to infringe any particular patent.

#### 24. SEPARATE DELIVERIES

We may deliver by instalments in such quantities as we may reasonably decide. Each delivery shall be invoiced separately and shall be regarded as a separate contract. A breach affecting one delivery shall not affect any other, provided that for so long as payment for any delivery has become due and is unpaid, we shall not (without prejudice to our rights under condition 19) be liable pending payment to make any further delivery pursuant to the contract and the customer shall not be able to cancel any future instalment or repudiate the contract as a whole.

#### 25. PROPER LAW

**The construction, validity and performance of our contracts shall be governed by English law and by the non-exclusive jurisdiction of the English courts.**

#### 26. HEADINGS

The headings to the paragraphs of these conditions are inserted for convenience of reference only and shall not affect their interpretation.

#### 27. SEPARATE PROVISIONS

Each of the foregoing conditions or sub-clauses thereof is to be construed as a separate provision applying and surviving even if for any reason one or other of the said conditions or sub-clauses thereof is held void or unenforceable in any circumstances.

#### 28. WAIVER

The waiver by us of any breach of any of these conditions shall not prevent the subsequent enforcement of that condition and shall not be deemed to be a waiver of any subsequent breach of that or any other condition hereof.

#### 29. NOTICES

Any notices required to be served hereunder may be given by first-class post to the parties at their registered office for the time being or the last known place of business and any notice so given shall be deemed served, in the case of UK customers, 48 hours after it has been posted and, in the case of overseas customers, 5 days after it has been posted, and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted as a pre-paid envelope.

**Without prejudice to the generality and importance of all the above Standard Terms and Conditions of Sale, we draw the customer's attention particularly to conditions 7, 9, 14, 15 and 23, which define certain of our contractual rights in the event of non-payment.**