

# Conditions of Business

## GENERAL

1. In these Conditions.

2. a) GEMINI CONTROLS SYSTEMS LTD. is called the Company and the individual, firm, company or other party with whom the Company Contracts is called "the Customer"

b) goods mean the goods, articles and materials which are to be supplied by the Company pursuant to the Contract (as hereinafter defined.)

2. a) Any quotation or estimate given by the Company is an invitation to the Customer to make an offer only and no order of the Customer placed with the Company in pursuance of a quotation or estimate or otherwise shall be binding on the Company unless and until it is accepted by the Company

b) Any contract howsoever made between the Company and the Customer ("the contract") shall incorporate and be subject to these Conditions and receipt of goods by the Customer shall be deemed to be conclusive proof that the Customer has accepted these conditions in the absence of any express or other implied acceptance of these Conditions by the Customer

c) Without prejudice to the generality of the foregoing all other terms and conditions (except those implied in favor of a seller which are not inconsistent with these Conditions) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or any other document delivered or sent by the Customer to the Company are expressly excluded. Any reference in the Contract to the Customers order specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such order, specification or the document will have effect.

## PRICES:

3. Unless otherwise provided in the contract

a) The price of the goods does not include the cost of cases or other packing materials which shall remain the property of the Company and will be returnable at the Customers expense at the request of the Company Any such cases or packing materials shall be paid for by the Customer as if part of the goods included in the contract but if returned by the Customer a credit will be issued subject to the manufacturers depreciation and rental charges.

b) The price of the goods and service is exclusive of Value Added Tax, or any other sales tax or excise duties paid or payable by the Company which will be charged at the rate applicable at the appropriate tax point.

c) The price of the goods does not include the cost of carriage.

d) Prices quoted for immediate delivery from stock are firm, subject to such stock remaining unsold at the time the Company accepts the Customers order. Otherwise prices quoted are based on costs at the date of quotation and the Company reserves the right to increase all prices at any time without notice and the price payable by the Customer shall be the price applicable at the date of delivery of the goods.

## DELIVERY & RISK

4a) Delivery of the goods shall be made to the Customer at the place specified in the Contract or as subsequently agreed between the parties and the risk in respect of all goods shall pass to the customer at the time of delivery. If no place for delivery is specified or agreed, delivery shall take place at the Company's work immediately prior to loading for dispatch to the Customer. Notwithstanding such delivery the property in and title to the goods shall not pass to the Customer except as provided in Condition 5 Where the Company does not deliver on its own transport and unless otherwise agreed in writing, the Company shall on behalf of the Customer and at the Customers expense arrange for the carriage and the carrier selected by the Company shall be the agent of the Customer. Special notice is directed to the fact that in accordance with the provisions of section 32 of the Sale of Goods Act 1979 delivery to the carrier will, in such circumstances constitute delivery to the Customers.

b) If delivery is to be made at the premises of the company's warehouseman or the bailee, sufficient delivery shall be made by the delivery to the Customer by the Company of an order on or by the transfer to the Customer of the warrant of such warehouseman or bailee for the release or delivery of the goods.

c) That Company shall be entitled to make delivery of the goods by installments and to invoice the Customer for any installment dispatched.

d) Where damage to or loss of the goods occurs before delivery thereof to the Customer the Company undertakes (subject as provided below) to replace or (at its discretion) to repair free of charge any goods so damaged or lost in which event the time for delivery of the damaged or lost goods shall be extended for such period as the Company shall reasonably require for such replacement or repair.

The foregoing undertaking of the Company is conditional upon

i) the Customer giving written notice of such damage or loss reasonable particulars thereof to the Company and to the carrier (if other than the Company) within 14 days of the receipt of the goods or in the case of total loss within 7 days of receipt of the Company's or the carrier's delivery advice or other notification of dispatch and

ii) the Customer if requested by the Company and at the Customers cost returning any damaged goods to the Company's works with one month of receipt thereof.

e) Where the goods are not manufactured or supplied directly by the company and are delivered directly to the Customer by, or collected by the Customer from the manufacturer or supplier the Company shall not be liable for any damage to or loss of the goods whatsoever or when so ever occurring

f) Save as expressly provided in this Condition, the Company shall not have any liability whatsoever for or in connection with any damage to or loss of the goods in transit to the contracted place of delivery

5a) Title to and property in the goods shall remain vested in the Company (notwithstanding the delivery of possession of the same and the passing of the risk therein to the Customer) until

1) the price of the goods comprises in this Contract and

2) all other money due from the Customer to the Company or any other account has been paid or satisfied in full.

b) Until the title to and property in the goods pass to the Customer as aforesaid that following provisions shall apply

The Company may at any time without prior notice to the Customer repossess and recall the goods if any of the events specified in Condition 12 hereof shall occur or if any sum owed by the Customer to the Company under this or any such other contract is not paid on the due date for payment. For exercising its rights under this sub-paragraph.

1) the Company, its employees or agents together with all vehicles and plant considered by the company to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon the Customer's premise and/or other locations where any of the goods are situated.

2) The Customer shall store the goods in a proper manner without charge to the Company and ensure that they are clearly identified as belonging to the Company. Without prejudice to sub-paragraph 1) of this Condition the Company shall be entitled to examine the goods in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so;

3) The rights and remedies conferred upon the Company by this Condition 5 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract.

6a) The Company will use its reasonable endeavors to comply with Any date or dates for dispatch or delivery of the goods as stated in the contract, but unless the Contract otherwise expressly provides such date or dates shall constitute only statements of expectation and shall not be binding if the Company having used its reasonable endeavors fails to dispatch or deliver the goods by such date or dates, such failure shall not constitute a breach of the Contract nor shall the Customer be entitled to treat the Contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting there from.

b) if the Company to prevented or hinder from performing the Contract or any part thereof by any circumstances beyond its reasonable control including (but without limiting the generality of the foregoing) strikes, lockouts or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure fire, flood, any commotion or any cause of whatever kind and whenever occurring, further performance of the Contract shall be suspended for so long as the Company is so prevented or hindered provided that if the performance of the Contract is suspended for more than two consecutive calendar months the Customer shall be entitled by notice in writing to the Company forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract rate for all goods services supplied and materials used by the Company to the actual date of such termination. The Company shall not have any liability to the Customer for direct or consequential loss or damage suffered by the Customer as a result of the Company's inability to perform to obligations under the Contract by reasons of any such circumstances

c) Where goods are "delivered, by installments; each such installment shall be deemed to be sold under a separate contract to which these Conditions shall apply (mutatis, mutandis) and save as provided in condition 8d) not default in respect of any one installment shall effect, or prejudice due nonperformance of the Contract as regard any installment.

d) Where goods are to be supplied or delivered by the Company in accordance with periodic delivery schedules or similar notification of the delivery requirements of the Customer the Customer shall not be entitled to cancel or vary any such delivery schedule or requirement which is expressed by the Customer to be a firm requirement without the prior written consent of the Company" and the Company shall be entitled to reimbursement of any additional cost and expenses Incurred or suffered as a result of such cancellation or variation.

e) When expedited delivery or completion is agreed to by the Company and necessitates overtime or other addition costs, the Customer shall reimburse the Company for the amount of such overtime payment or other costs Where postponement of delivery or completion is agreed by the Company the Customer shall, if required by the Company, pay all costs and expenses (including a reasonable charge for storage and insurance of the goods and interest on the contract price) Occasioned thereby but the goods shall be held at the Customers risk as from the time of postponement.

f) If performance of the Contract is suspended at the request of or delayed through default of the Customer including (without prejudice to the generosity of the foregoing) lack of complete or incorrect instructions or refusal to collect or accept delivery of the goods or services for a period of 7 days the Company shall be entitled to payment at the Contract rate for services already performed, goods supplied or ordered and any other additional costs thereby Incurred including storage insurance and interest PROVIDED THAT if the Customer fails to collect or accept delivery of the goods or any part thereof with 28 days of written notification from the Company that the goods are ready for collection or delivery the Company are shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell or at its option destroy the goods and to apply the proceeds of sales thereof if sold and the scrap value if destroyed towards payment of all sums due to the Company under the Contract

g) The Company shall be entitled without the prior approval of the Customer to assign, sub-contract or sub-let the Contract or any part thereof, but the Customer shall not be so entitled without the prior approval of the Company.

## ACCEPTANCE

7a) Without prejudice to the Customers rights under Condition 10, the Customer shall be deemed to have accepted the goods as being in conformity with the Contract and shall be bound to pay for them, unless written notice of rejection thereof is received by the Company within 14 days of delivery. Save in the circumstances referred in Condition 10 goods accepted by the Customer cannot subsequently be returned and any claim which the Customer might otherwise have shall be deemed to have been waived

b) If after notice of rejection has been given, the Customer deals with the goods as owner thereof or if any conduct of the Customer is inconsistent with such rejection or with the ownership of the goods by the Company, the Customer shall be deemed to have accepted and bound to pay for them.

## PAYMENT

8a) Unless the Customer has a credit account with the Company the contract price for the goods shall be payable with the Customer's order or against a proforma invoice;

b) Customers wishing to open a credit account with the Company must furnish credit references which unless otherwise stated shall be one bank reference and two trade references

c) Where goods are delivered or performed by installments, the Customer shall be obliged to pay for each installment upon the terms set out in sub-paragraph a) of this condition

d) The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Company upon the expiration of 14 days notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition the Company shall be entitled without liberty wholly or partly to cancel the Contract or any other contract between the Company and the Customer without prejudice to any other remedy available to the Company

e) Unless otherwise agreed in writing the Customer shall not be entitled to set off against any monies due to the Company under the contract any amount claimed by or due to the Customer from the Company whether pursuant to the Contract or on any other account whatsoever

f) The Company shall be entitled to interest as well after as before judgment on any part of the Contract price not paid by its due date from that date until actual payment at the rate of 5 per cent per annum above Base Lending Rate of Bank of England prevailing from time to time during such period

## DRAWINGS AND SPECIFICATIONS

9) Unless it is expressly stated in the Contract that any figures or statements therein or in the Company's catalogues sales literature or in any relevant drawings or other documents supplied by the Company as to the performance of the goods are guaranteed to be accurate such figures and statements shall be approximate and subject to reasonable variation. The Company gives no guarantee or representation that the goods will in all cases be identical with the illustration weights and dimensions specified in such catalogues and literature drawings or other documents due to improvements and modifications to the goods or their specifications that may be made from time to time. The Company will notify the Customer in writing of any material alterations to any specification relating to the goods and the Customer shall be deemed to have accepted such alterations unless notice in writing to the contrary is received by the Company within 7 days of the Company's notice to the Customer

WARRANTY 10a) Where any goods or services (or any part thereof) are shown to the reasonable satisfaction of the Company, to be defective by reason of faulty materials or workmanship or design, and the Customer reports the defect to the Company in writing within a period of 14 days of delivery and returns the goods to the Company within 3 months from the date of their original dispatch or supply (fair wear and tear excepted) the Company shall at its sole option

1) deliver replacement goods and/or supply further services to the Customer free of charge and/or

2) refund to the Customer the Contract price of such goods and/or service and/or

3) require the Customer to retain the goods and/or service and grant to the Customer a reasonable allowance in respect of such defects.

## PROVIDED that:

the goods have been properly and correctly stored and/or used by the Customer and

ii) the liability of the Company under this paragraph a) shall be accepted by the Customer in substitution for and to the exclusion of any other claims for direct loss which the Customer has or may have

b) the liability of the Company for any claim or claims other than those falling

within paragraph a) above for direct Injury, loss or damage made by the Customer against the Company whether in Contract or in tort (including negligence on the part of the Company, its servants or agents) arising out of or in connection with any defect in the goods and/or service or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Contract or the breach of a fundamental term thereof) of the Company its servants or agents in the performance of the Contract (including, without limiting the generality of the foregoing breach of any condition or warranty whether express or implied by statute common law or otherwise howsoever) shall be limited to £100,000 c) The Company shall not be liable for claims for economic loss, loss of production, loss of profit, loss of opportunity loss of bargain of any other indirect or consequential injury loss or damage made by the Customer against the Company whether in Contract or in tort (including negligence on the part of the Company its servants or agents) arising out of or in connection with any such defect, act, omission, neglect or default referred to in sub-clause b) of this clause d) nothing in these Conditions shall

limit or exclude the liability of the Company in respect of death or personal injury resulting from the neglect of the Company, its employees or agents or 2) Limit or exclude the respective rights and remedies of the Company and the Customer under the Unfair Contract Terms Act 1977, or Goods Act 1979 and 3) exclude the conditions and warranties implied by section 12 of the Sale of Goods Act where the customer deals as a Consumer the conditions implied by sections 13 to 15 inclusive of the said act and by sections 3 and 4 of the Supply of Goods and Services Act 1992

## HEALTH AND SAFETY

11 a) The attention of the Customer is drawn to the provisions of section 6 of the Health and Safety at Work etc. Act 1974. The Company will make available such information as is appropriate relating to the goods and materials supplied as is in its possession to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used.

b) The Customer hereby undertakes pursuant to section 6 (9) of the Health and Safety at Work etc Act 1974 to take such measures as are communicated in writing to the Customer by the Company and to take such other steps as are sufficient to ensure, so far as is reasonably practicable, that the goods will at all times be safe and without risk to health when properly used. The goods and materials shall not be regarded as properly used when used without regard to any relevant information or advice relating to their use which has been communicated to the Customer pursuant to this clause. 'c) The Company shall not be liable to the Customer in any civil proceedings brought by the Customer against the Company under any Health and Safety Regulations made pursuant to the Health and Safety at Work etc. Act 1974 where such exclusion of liability is permitted by law d) The Customer shall indemnify and keep indemnified the Company in respect of any liability, monetary penalty or fine in respect of or in connection with the goods or services incurred directly or indirectly by the Company under the Health and Safety at Work Act 1974 or any regulations orders of directions made there under

## INSOLVENCY AND BREACH OF CONTRACT.

12 If any of the following events occur occur, are threatened or in the opinion of the Company are reasonably likely to occur. a) The Customer shall commit any breach of the Contract and shall fail to remedy such breach (if capable of remedy) within a period of thirty days from receipt of notice in writing from the Company requesting such breach to be remedied or;

b) Any distress or execution is levied upon any other goods or property of the Customer or c) The Customer (or whether the Customs is, a partnership any partner thereof) offers to make any agreements with or for the benefit of its or his creditors or commits any act of bankruptcy or c) The Customer (being a limited company) has a Receiver appointed of the whole or any part of its undertaking property of assets or an order is made or a resolution is passed (or analogous proceedings are taken for the winding up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Company) the Company shall thereupon be entitled without prejudice to its other rights hereunder forthwith to suspend further performance of the Contract or any other Contract between the Company and the Customer until the default has been made good or to determine the contract or any other Contract between the Company and the Customer or any unfulfilled part thereof or at the Company's option to make partial supplies of goods Notwithstanding any such termination, the Customer shall pay to Company at the Contract rate for all work done, materials used and goods delivered upon to and including the date of termination and shall in addition indemnify the Company against any resulting loss, damage or expense incurred by the Company in connection with the supply or non-performance of the Contract including the cost of any material, plant or tools used or intended to be used therefore and the cost of labour and other overheads including a percentage in respect of profit

## SEVERANCE

13. If at any time any one or more of these Conditions (of any paragraph, sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law. The same shall be deemed omitted here from and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected if impaired thereby

## WAIVER

14. The rights and remedies of the Company under the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies.

## LAW

15. These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of England and the Company and the Customer irrevocably submit to the exclusive jurisdiction of the English Courts