



Revision 5.0

Standard Terms and Conditions for the Sale of Equipment and Services – 1st May 2019

Commend UK Ltd

Commend House, Unit 2, M11 Business Link, Parsonage Lane, Stansted, Essex, CM24 8GF

1. DEFINITIONS:

- i. 'Buyer' means the party who has placed the purchase order on the Supplier;
- ii. 'Conditions' means these terms and conditions;
- iii. 'Contract' means the contract between the Buyer and the Supplier consisting of the Order and these Conditions;
- iv. 'Order' means the purchase order placed by the Buyer;
- v. 'Price' means the sum to be paid by the Buyer to the Supplier;
- vi. 'Product' or 'Products' means any Special Equipment and/or Standard Equipment;
- vii. 'Quotation' means the written quotation given by the Supplier to the Buyer;
- viii. 'Services' means the work and/or services specified in the Order to be performed by the Supplier to the Buyer upon acceptance of the same.
- ix. 'Special Equipment' means any non-standard or bespoke Product;
- x. 'Standard Equipment' means any catalogue Product;
- xi. 'Supplier' means Commend UK Ltd;

2. GENERAL:

- 2.1 Any Order placed upon a Quotation or otherwise shall be accepted entirely at the discretion of the Supplier and if so accepted shall only be accepted upon these Conditions.
- 2.2 The Contract will be formed on acceptance by the Supplier of the Order placed by the Buyer.
- 2.3 These Conditions shall apply to the Contract to the exclusion of any terms or conditions stipulated or referred to by the Buyer and shall prevail over any contrary, different or additional terms or conditions howsoever communicated.
- 2.4 No other agreement, representation, promise, undertaking or understanding of any kind unless expressly confirmed by the Supplier in writing shall add, vary or waive any of these Conditions.

3. PRICES:

- 3.1 Unless otherwise stated, all prices quoted are ex-works and exclusive of VAT, other taxes and duties, and carriage. Delivery instructions received with order determine cost – forwarding quotations for export are available upon request.
- 3.2 The Supplier's price list shall not form part of the Contract.
- 3.3 Subject to Clause 3.5, the Price may be varied by the Supplier at any time prior to acceptance of an Order.
- 3.4 The Price shall be in pounds sterling unless otherwise agreed by the parties.
- 3.5 Any price set out in a Quotation will remain available for acceptance for a period of 95 days after the date of the Quotation.

4. PRODUCT INFORMATION:

- 4.1 All sales information and equipment specifications are correct at the time of printing, however, the Supplier reserves the right to withdraw, upgrade and enhance equipment without prior notice and/or replace them with items of equivalent specification.
- 4.2 No other specification, descriptive material, written or oral representation, correspondence or promotional/sales materials shall form part of or be incorporated by reference into the Contract.

5. DELIVERYTIMES:

- 5.1 Any times for delivery are estimates only and although the Supplier will use reasonable efforts to deliver the Products in accordance with the times specified, time is not of the essence.
- 5.2 Generally, the delivery time shall be 4-6 weeks for Standard Equipment and 6-8 weeks for Special Equipment or, as stipulated in the Quotation. The delivery time commences from date of receipt by the Supplier of a written Order from the Buyer but this should be checked at the time of order placement. Delivery times may vary depending on the then current production schedules or the time of delivery of items to us from our suppliers.





6. DAMAGE IN TRANSIT

All Products should be examined at the time of delivery. No allowance will be made for shortages or damage unless the Supplier receives written notice thereof within seven days of delivery. In the event that notification is not received by the Supplier in the required time the delivery shall be deemed complete

7. WARRANTY:

7.1 All of the said Products manufactured by Commend International GmbH is warranted for 24 months from the date of dispatch by the Supplier as shown on the Delivery Note.

7.2 Products supplied from sources other than Commend International GmbH is supplied with the manufacturer's warranty term. **7.3** The Supplier's warranty is "return to base". Faulty units must be returned pre-paid for repair or replacement. If the failure is within the terms of the warranty, the subsequent return of the item is free of charge.

7.4 The warranty covers only faulty workmanship in manufacture or faulty materials. The Supplier will not be liable for any damage to the said equipment caused by any act of God, flood, lightning, thunderstorm, vandalism, misuse, accidental damage or any unauthorised work on the equipment. All other equipment including site cabling to which the said Products are connected is expressly excluded.

7.5 For Products requested to be repaired under warranty "on site" the Supplier reserves the right to charge for labour, travelling and associated expenses to and from site. On-Site Warranty cover is available as an optional extra at the time of order. Please refer to the separate document 'On-Site Warranty Cover – Terms& Conditions, latest revision, available upon request.

8. PAYMENT TERMS:

8.1 Unless otherwise agreed, payment terms are strictly thirty days from date of invoice, subject to prior credit approval.

8.2 Where Products and Services are to be supplied against the same Order, both Products and Services will be invoiced upon dispatch of the Products. Any other element requiring site attendance or any Order for just Services will be invoiced at the point of order of the Services and the same payment terms will apply.

8.3 A counterclaim or set off shall not entitle the Buyer to withhold payment.

8.4 The Supplier shall be entitled to charge interest at the Barclays Bank Base Rate plus 4% per annum on outstanding payments from the date of delivery up to and including the date payment is received by the Supplier.

8.5 In the event the Buyer fails to make payments in accordance with this Condition 8 the Supplier shall be entitled, without prejudice to any other rights it may have, to suspend deliver or performance of any outstanding Orders (in whole or in part) without liability until payment is made in full of all outstanding sums.

8.6 The Supplier reserves the right at its sole discretion and at any time to withdraw or change any credit facility that may have been granted by the Supplier to the Buyer.

9. TITLE OF GOODS AND RISK:

9.1 Notwithstanding delivery to the Buyer, the Supplier shall be legally and beneficially entitled to the ownership of the Products until payment of the purchase price or all debts owed by the Buyer to the Supplier. Until such payment, and subject to the following provisions, the Buyer holds the Products as bailee of the Supplier and owes to the Supplier the normal fiduciary obligations of a bailee by way of custody in respect of the Products.

9.2 In so far as the Buyer shall, or shall purport to, offer for sale and sell the Products, it shall do so only at the best obtainable price in the ordinary course of its business as principal and not as agent for the Supplier. The Supplier shall, by reason of the said relationship of bailment between the Buyer (as bailee) and itself (as bailor), be and remain legally and beneficially entitled to the proceeds of sale and the Buyer shall pay such proceeds of sale into a separate account or, otherwise, shall ensure that all the proceeds of sale are kept by or on behalf of the Buyer in a separate and identifiable form. The proceeds shall not be paid into an overdrawn bank account. Upon receipt of the proceeds of sale, the Buyer shall discharge the debt due to the Supplier and shall not use or deal with the proceeds of sale in any way whatsoever until such debt has been discharged.

9.3 Notwithstanding the prior contents of this clause risk in the Products shall pass to the Buyer upon delivery but where the Buyer nominates a carrier other than that selected by the Supplier to deliver the Products, the risk shall pass to the Buyer on the earlier of the Products being passed to the Buyer's nominated carrier or leaving the Supplier's premises.

10. CANCELLATION:

10.1 Cancellation of any Purchase Order by the Buyer must be advised in writing and prior to delivery.

10.2 If such cancellation is received more than 7 days after receipt of the Purchase Order by the Supplier and prior to delivery, such order will be subject to the following destocking/cancellation charges: (i) for Standard Equipment 50% of the sales value of the Purchase Order subject to a minimum charge of £500 (plus VAT), and (ii) For Special equipment 80% of the sales value of such equipment, subject to a minimum of £500 (plus VAT).

10.3 Any application for credit return after delivery has taken place will be considered on an individual basis and the amount of any destocking charge will be solely determined by the Supplier.

10.4 The Supplier reserves the right to vary these charges according to circumstances. Generally, only goods under 3 months old will be considered for credit return.





11. LIMITATION OF LIABILITY:

11.1 The Supplier's liability to the Buyer under the Contract shall not in respect of any and all direct loss caused by the negligence of or breach of any obligation hereunder of the Supplier, its agents or employees exceed the Price.

11.2 The Supplier shall have no liability to the Buyer for any loss (including loss of profit or other economic loss (direct or indirect), indirect or consequential loss) or damage of any nature (howsoever caused) or loss or damage (contractual, tortious, breach of statutory duty or otherwise) arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Supplier or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except for death or personal injury resulting from the Supplier's negligence; or fraudulent misrepresentation.

11.3 In case where the Supplier, its agents or employees are asked to recommend Products to meet the Buyer's requirements the Supplier does not warrant, represent or undertake that the purchase of the products will satisfy the Buyer's requirements. All recommendations about any Product or Products by the Supplier are recommendations only and the Supplier accepts no responsibility if any products sold fail to meet the Buyer's requirements or purpose or to achieve a particular result.

12. TERMINATION:

The Supplier may at its discretion suspend or terminate the Contract if the Buyer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract with the Buyer or the Buyer becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or ceases or threatens to cease trading or the Supplier bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.

13. FORCE MAJEURE:

13.1 The Supplier shall be under no liability for any delay or failure to perform any of its obligations under the Contract in the event of Force Majeure. Following notification by the Supplier to the Buyer of such event, the Supplier shall be allowed a reasonable extension of time for the performance of its obligations.

13.2 For the purposes of this Condition, "Force Majeure" means any act or circumstances beyond the Supplier's reasonable control including, but not limited to Act of God, act of terrorism, war, rebellion, riot, sabotage, fire, explosion, flood, drought, failure of power supply or other utilities, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or any change in legislation.

13.3 If an event of Force Majeure continues for a period of twenty one days from the date of notification by the Supplier to the Buyer in accordance with Condition 13.1, then the Supplier may terminate the Contract forthwith without prejudice to any

14. WAIVER:

In the event that either party does not insist upon strict performance of any of these Conditions then this shall not be deemed a waiver of any rights or remedies nor of any subsequent default.

15. INVALIDITY:

The invalidity, illegality or unenforceability in whole or in part of any provision of these Conditions shall not affect the validity of the remaining provisions.

16. ASSIGNMENT:

16.1 The rights and obligations of the Buyer under the Contract may not be assigned or transferred in whole or in part without the prior written consent of the Supplier.

16.2 The Supplier may without obtaining the consent of, or giving notice to the Buyer, assign or sub-contract all or any of its rights and obligations under the Contract

17 ENTIRE AGREEMENT:

The Contract contains the entire understanding and agreement between the Supplier and the Buyer in respect of the subject matter of the Contract and supersedes all prior oral or written communication, undertakings and any practice or course of dealing applying between the Supplier and the Buyer.

18.GOVERNING LAW:

These Terms and Conditions are subject to English Law and subject to the exclusive jurisdiction of the courts of England and Wales

