

YOU SHOULD READ THESE TERMS CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION ABOUT THE WAY IN WHICH YOU AGREE TO CONTRACT WITH US FOR THE PURCHASE OF PRODUCTS AND/OR SERVICES

A: GENERAL TERMS AND CONDITIONS TO APPLY TO ALL CONTRACTS

YOUR ATTENTION IS DRAWN IN PARTICULAR TO THE SECTIONS CONCERNING OUR LIABILITY TO YOU (PARAGRAPH 4).

1. About these terms and conditions of sale

1.1 These Terms and Conditions (**Terms**) will apply to any contract between us for the sale of Products (as described in the Order) or supply of Services (as described in the Order) or the supply of Products and Services (as described in the Order) to you (**Contract**). Please read these Terms carefully, and check that the details on the quotation issued to you (**Order**) are complete and accurate. If you think that there is a mistake in the Order, or if you require any changes to be made to the Order to meet your requirements, please contact us to discuss.

1.2 These Terms, and any Contract between us, are only in the English language.

1.3 References in these Terms to **we**, **us** and **our** are to TWM Traffic Control Systems Limited (4456251) whose registered address is at 15 Carnarvon Street, Manchester, M3 1HJ.

Placing an order

1.4 Please check your Order carefully, and let us know if there are any errors on the Order before signing it.

1.5 By signing the Order (which incorporates these Terms), you are offering to purchase Products and/or Services from us at the prices set out on the Order.

1.6 Our acceptance of your order will take place upon delivery of the Products.

2. Price of Products and/or Services and delivery charges

2.1 The prices of the Products and/or Services will be as quoted in the Order. We only accept payment for orders in £ sterling.

2.2 The price of Products and/or Services excludes VAT at the applicable current rate chargeable in the UK for the time being.

2.3 You will be liable to pay any relevant delivery charges as may be set out on your Order.

3. How to pay

3.1 Unless we have agreed otherwise in advance in writing, payment for all Products and/or Services must be made in cleared fund using BACS within 30 calendar days of the date of invoice.

3.2 We may withhold or suspend the Products and/or Services and/or cancel the Contract between us if payment is not received from you in full in cleared funds.

3.3 If you do not make any payment due to us by the due date for payment, we may charge interest to you on the overdue amount at the rate of 3% a year above the base lending rate of The Royal Bank of Scotland plc from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

4. Our Liability

4.1 Financial Caps

Subject to paragraph 4.3, our maximum aggregate liability will be limited to the total amount which we have received from you under the Contract.

4.2 Exclusion of liability arising from specified events or heads of loss

We will have no liability to you for any:

4.2.1 loss of profit (whether direct, indirect or consequential);

4.2.2 loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential);

4.2.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);

4.2.4 loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);

4.2.5 loss of bargain (whether direct, indirect or consequential);

4.2.6 liability of you to third parties (whether direct, indirect or consequential);

4.2.7 loss of use or value of any data or software (whether direct, indirect or consequential);

4.2.8 wasted management, operational or other time (whether direct, indirect or consequential);

4.2.9 loss or damage arising out of any failure by you to keep full and up to date security copies of any computer program and data held or used by or on behalf of you (whether direct, indirect or consequential); or

4.2.10 indirect, consequential or special loss,
subject always to paragraph 4.3.

4.3 Non-excludable liabilities by law

Nothing in this Contract will operate to exclude or restrict one party's liability (if any) to the other:

4.3.1 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);

4.3.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;

4.3.3 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

4.4 Each party agrees to use its reasonable endeavours to mitigate the consequences of any breach by the other and the losses, costs, expenses, claims and demands it may claim as a result of that breach including, for the avoidance of doubt any claim under any of the indemnities contained in this Contract. This will not in any way restrict or reduce any obligation to mitigate loss or damage which may exist at common law.

4.5 The exclusions from, and limitations, of liability contained in this Contract will apply after as well as before the date of expiry or termination of this Contract.

4.6 The exclusions from, and limitations of, liability set out in this paragraph 4 will be considered severally. The invalidity or unenforceability of any one sub-paragraph or paragraph will not affect the validity or enforceability of any other sub-paragraph or paragraph and will be considered severable from each other.

4.7 Subject to paragraph 4.3 all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from this Contract.

4.8 Notwithstanding any other term of this Contract we will not be in breach of this Contract to the extent our failure to perform or delay or defect in performance of our obligations under this Contract arises as a result of:

4.8.1 any breach by you of your obligations contained in this Contract;

4.8.2 us relying on any incomplete or inaccurate data provided by a third party; or

4.8.3 us complying with any instruction or request by you or one of your employees or agents.

4.9 Subject to paragraph 4.3, we will not have any liability for any breach unless you give us written notice of that breach prior to the expiry of the warranty period specified in the Order and within a) 5 days of that breach occurring or, if later, b) the date on which you became aware (or should reasonably have become aware) of the breach specifying in reasonable detail (to the extent such information is available at the time such notice is given) the nature and extent of the breach and the amount claimed by you arising from the breach.

- 4.10 We are not responsible for the cost of repairing any pre-existing faults or damage to the Site (as defined in paragraph 10.4.2) and/or your property that we discover in the course of installation and/or performance by us or caused by improper use of or unauthorised interference with the Products.
- 4.11 We will not be responsible for any loss or damage caused by an unexpected surge of electricity during our performance of the Services or to the Products once they have been installed.
5. **Events Outside Our Control**
- 5.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by an Event Outside Our Control.
- 5.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including, without limitation, acts of God, flood, earthquake, storm, subsidence or other natural (or epidemic) disaster, any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war or impossibility of the use of public or private transport.
- 5.3 If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract:
- 5.3.1 we will contact you as soon as reasonably possible to notify you; and
- 5.3.2 our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.
- 5.4 For the avoidance of doubt, you will continue to pay the invoices in accordance with paragraph 3.1 in respect of any Products and Services which we continue to supply notwithstanding the occurrence of an Event Outside Our Control.
6. **Other important terms**
- 6.1 We may transfer our rights and obligations under a Contract to another organisation.
- 6.2 You may only transfer your rights or your obligations under these Terms to another person if we agree in writing.
- 6.3 The Contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties Act) 1999 or otherwise.
- 6.4 Each of the paragraphs of these Terms and Conditions of Sale operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- 6.5 If we fail to insist that you perform any of your obligations under these Terms or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 6.6 These Terms are governed by English law. This means a Contract for the purchase of Products and any dispute or claim arising out of or in connection with it will be governed by English law. You and we both agree to that the courts of England will have exclusive jurisdiction.

B. TERMS AND CONDITIONS RELATING TO SALE OF PRODUCTS

7. Our Products

- 7.1 The Products are identified in the Order.
- 7.2 The images of the Products on our Website and in our catalogue or brochure are for illustrative purposes only. Although every care has been taken to ensure that the photographic representation, description and specification of each Product is accurate, we cannot guarantee that the printed pictures accurately reflect the colour of the Products, and your Products may vary slightly from those images.

8. Delivery

- 8.1 Your order will be fulfilled within the delivery period detailed on the Order, unless there is an Event Outside Our Control (see paragraph 5), provided always that time for delivery shall not be of the essence. If we are unable to meet the delivery date because of an Event Outside Our Control, we will contact you to agree a revised delivery date.
- 8.2 Please ensure that you check that the address contained in the Order is correct. We cannot be held responsible for items which go missing or are delayed due to inaccurate or incomplete delivery address information that you provide to us.
- 8.3 Delivery will be completed, and risk in the Products will pass to you, when we deliver the Products to the address you gave us for delivery (the **Delivery Address**) and you will be responsible for the Products when they are delivered to you. In circumstances where we are also providing Services to you, you will ensure that there is a secure room on Delivery Address for storage of the Products prior to completion of the Services and neither we, nor any of our agents or sub-contractors, may be held liable for any loss or damage to the Products (unless such loss or damage is caused solely by our act or omission).
- 8.4 You own the Products once we have received payment in full for the Products. We may withhold the Products and/or cancel the Contract between us if payment is not received from you in full in cleared funds.
- 8.5 If you fail to accept delivery of the Products, we will be entitled to charge you for all related costs and expenses (including insurance) associated with storing the Products until delivery takes place.
- 8.6 If 14 calendar days after the date on which we notified you that the Products were ready for delivery you have not accepted delivery of the Products, we may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to you for any excess over the price of the Products or charge you for any shortfall below the price of the Products.

9. Risk and property

- 9.1 Risk of damage to, or loss of, the Products shall pass to you when we deliver the Products to the Delivery Address (and, if the Delivery Address is our premises, this will be at the time when we notify you that the Products are available for collection).
- 9.2 Notwithstanding delivery and the passing of risk in the Products, legal title in the Products shall not pass to you until we have received in cash or cleared funds payment in full of: (i) the price of the Products (plus VAT); and (ii) all other sums which are or which become due to us from you on any account.
- 9.3 Until such time as legal title in the Products passes to you, you shall:
- 9.4 hold the Products as our fiduciary agent and bailee and shall accordingly remain liable to account to us for the Products;
- 9.5 identify the Products as our property;
- 9.6 not remove, alter, destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- 9.7 protect and maintain the Products in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction.
- 9.8 Subject to paragraph 9.2, you shall be entitled to resell or use the Products in the ordinary course of your business but such right shall terminate immediately if: (i) you fail to make payment of any sum whatsoever due to us on the relevant due date; (ii) we, acting reasonably, notify you in writing that we have bona fide doubts as to your solvency; and/or (iii) you are subject to, or suffer, any event of insolvency.
- 9.9 Where we are unable to determine whether any Products are the goods in respect of which your right to possession has terminated, you shall be deemed to have sold all goods in the order in which they were invoiced to you.
- 9.10 Until such time as title in the Products passes to you (and provided the Products are still in existence and have not been resold), we shall be entitled at any time to require you to deliver-up the Products to us and, if you fail to do so, we, our agents and/or employees, may forthwith enter upon

any of the Site and/or your property/premises and/ or the property/premises of any third party where the Products are and repossess the Products. If the Products have been incorporated into any property within your control, we may dismantle the Products or detach them from any items and you shall be liable to us for all costs incurred in so doing and for any diminution in the value of the Products suffered by us, or loss of profit on the resale of the Products.

9.11 You shall not be entitled to encumber or in any way charge any of the Products in which legal title remains vested in us. If you do so, all monies owing by you to us shall (without prejudice to any other right or remedy of ours) forthwith become due and payable.

10. **Warranty**

10.1 The provisions of this paragraph 10 are subject to the provisions of paragraph 4.

10.2 The Products supplied to you by us will:

10.2.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by you;

10.2.2 be free from defects in design, material and workmanship and remain so for the warranty period specified in the Order (or, if none is specified in the Order, for 12 months) after delivery (or, if we are to install the Products, installation) unless otherwise agreed; and

10.2.3 comply with all applicable statutory and regulatory requirements.

10.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the agreement.

10.4 The warranty detailed at paragraph 10.2 (the **Warranty**) does not apply to any defect in the Products arising or resulting from:

10.4.1 fair wear and tear;

10.4.2 the location in which the Products are used or are to be used (the **Site**), or for the method of installation (save where they are installed by us or by a third party on our behalf)

10.4.3 any maintenance undertaken (save where it is undertaken by us or by a third party on our behalf);

10.4.4 abnormal storage or working conditions;

10.4.5 failure to use the Products in accordance with the user instructions;

10.4.6 storm, flood, unusually strong winds, earthquake, subsidence or other similar events of nature;

10.4.7 damage, accident, negligence and/or vandalism (in each case, by you or by any third party); and

10.4.8 any third party interference with the Products.

10.5 The Warranty is extended only to the first end-user of the Products and is not transferable.

11. **If there is a problem with the Products**

11.1 If there is any defect with the Products which (acting reasonably) you consider we will be liable for under the Warranty, you agree that you will:

11.1.1 contact us and tell us as soon as reasonably possible;

11.1.2 if you have purchased the Products on a supply only basis (i.e. without any of our installation services), return to us (at your cost) the relevant Products;

11.1.3 if you have purchased the Products together with our installation services, at our option either return to us (at our cost) the relevant Products or permit us or our agent or sub-contractor to inspect it (and, if relevant, repair it) at your premises or the Site;

11.1.4 provide us with all information and assistance which we may reasonably require to investigate the defective Products;

11.1.5 give us a reasonable opportunity to repair or replace at our option any defective Products and/or defective part(s) in the Products; and

11.1.6 be responsible for all costs incurred by us if we are unable to find any defect in the Products and/or if any defect identified in the Products has been caused as a result of any of the circumstances detailed in paragraphs 10.4.1- 10.4.8 (inclusive).

11.2 We will use every effort to repair or replace the defective Products as soon as reasonably practicable and, in any event, within 30 days.

11.3 Your sole remedy in respect of any defect with the Products will be as set out in paragraph 11.2. You will have no right to terminate this Contract in respect of any defect with the Products.

11.4 The terms of paragraph 11.2 will not apply in circumstances where we suspect that any defect has been caused as a result of any of the circumstances detailed in paragraphs 10.4.1- 10.4.8 (inclusive).

12. **Software**

Subject to these Terms and to the payment by you of all charges due under the Order and these Terms, we grant you the non-exclusive, non-transferable and non-sublicensable right to use any software incorporated into the Product to such extent as is necessary to enable you to use the Product as is envisaged by us.

C. TERMS AND CONDITIONS RELATING TO THE SUPPLY OF SERVICES

13. **Providing services**

13.1 We will supply the Services to you in accordance with the dates set out in the Order or as otherwise agreed between us provided always that time shall not be of the essence.

13.2 We will make every effort to complete the Services on time. However, there may be delays due to an Event Outside Our Control. See paragraph 5 for our responsibilities when an Event Outside Our Control happens.

13.3 We will prepare detailed drawings and designs based on information provided by you but you will be responsible for ensuring that such drawings and design reflect your requirements, as discussed with us, and will confirm by signing off on such drawings that you are happy with the design(s) and for us to proceed with the Services.

13.4 You will be responsible for preparing the Site for the Services and ensuring that there is a safe environment for us to work in. We will not be liable for any delay or non-performance where you have not complied with this paragraph 13.4.

13.5 We will not be responsible for the costs of any additional work or Services or loss or damage caused by any hidden pipes or cables. If you are aware of any pipes or cables, which are not immediately obvious when viewing the Site, you should inform us of their existence. Where you fail to provide this information, you will be responsible for any additional costs incurred in preparing and carrying out revised Services.

13.6 We will need access to the Site, including access to any equipment and/or apparatus, to provide the Services. If we are not able to access the Site or fuse box on the dates that we agree for performance of the Services, and have to revisit the Site to perform the Services at another time, we may make an additional charge of a reasonable sum to cover any extra costs incurred. We will not be liable for any delay or non-performance where you have not provided access to us.

13.7 We will not be liable for any loss or damage caused by your failure to prepare the Site for the Services under paragraph 13.4 or paragraph 13.5.

13.8 We will not be responsible for restoring the Site to its previous condition following completion of the Services.

13.9 We may have to suspend the Services if we have to deal with technical problems, or to make improvements agreed between you and us in writing to the Services. We will contact you to let you know in advance where this occurs, unless the problem is urgent or an emergency. You do not have to pay for the Services while they are suspended under this paragraph 13.9 but this does not affect your obligation to pay for any invoices we have already sent you.

13.10 If you do not pay us for the Services when you are supposed to as set out in paragraph 3, we may suspend the Services with immediate effect until you have paid us the outstanding amounts. We will contact you to tell you this. This does not affect our right to charge you interest under paragraph 3.3.