



TROIKA SYSTEMS LIMITED

TERMS AND CONDITIONS

FOR THE SUPPLY OF GOODS AND SERVICES

August 2006

1. INTERPRETATION

1.1 In these Conditions:

"Company"	means Troika Systems Limited (registered in England under number 03292855);
"Customer"	means the person, firm or company, who accepts a quotation of the Company for the sale of the Goods and/or the Services or whose Order for the Goods and/or Services as accepted by the Company;
"Conditions"	means the standard terms and conditions of sale set out in this document (unless the context otherwise requires) including any special terms and conditions agreed in Writing between the Customer and the Company;
"Order"	means Customer's instructions to supply Goods or Services;
"Contract"	means the contract for the purchase and sale of the Goods and/or Services;
"Goods"	means the goods exclusive of any software comprised in them (including any instalment of the goods or any parts for them) that the Company is to supply in accordance with these Conditions;
"Installation Services"	means pre-delivery inspection of the Customer's installation site to assess suitability, space, cabling and service requirements and installation of the Goods at the Customer's site on delivery;
"Services"	means the Installation Services and/or other services that the Company may provide in accordance with these Conditions;
"Software Licence Agreement"	means the non-exclusive sub-licence granted to the Customer by the Company for the use of the goods, as referred to in clause 12; and
"Writing"	includes hard copy sent by post, electronic and facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. BASIS OF SALE

- 2.1 The Company shall sell and the Customer shall purchase the Goods and/or Services in accordance with any written Order of the Customer which is accepted by the Company, subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing by an authorised representative of the Company.
- 2.3 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents is followed or acted upon entirely at the Customer's own risk. The Company shall not be liable for any advice or recommendation as to the application or use of the Goods that is not confirmed in Writing by the Company.
- 2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. ORDERS AND SPECIFICATIONS

- 3.1 No Order for Goods comprising hardware and/or software submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company. Each Order so accepted shall constitute a separate contract.

3.2 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

3.3 No Order which has been accepted by the Company may be cancelled by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation in which case the Customer shall pay the Company's invoice within seven days of its date.

4. PRICE OF GOODS AND SERVICES

4.1 The price of the Goods and/or Services shall be as stated in the Company's quotation or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the Order. The price of Goods and/or Services relating to any non-standard software, interfaces or drivers shall be exclusively as stated in the Company's separate quotation for such Goods and/or Services.

4.2 All quotations are valid for 30 days or until earlier withdrawal by the Company unless agreed otherwise in writing.

4.3 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company, any change in delivery date, quantities or specifications for the Goods and/or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions. In the event of such price variation, the Customer shall be entitled to cancel any Order for undelivered Goods or unperformed Services. Any such cancellation must be in Writing and within 7 days of the Company's notification of the price variation or within 14 days before delivery or performance is due, whichever is the sooner.

4.4 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.

4.5 Unless otherwise agreed in Writing, all prices are exclusive of costs for delivery, postage, packing, administration and insurance, which will be additionally charged to the Customer.

5. TERMS OF PAYMENT

5.1 Subject to any special terms agreed in Writing between the Customer and the Company, the Customer shall pay 100% of the price of any Goods comprising hardware or software upon placing an Order for such Goods for which sum the Company will issue a proforma invoice to the Customer. Where the Customer places an Order for Goods comprising consumables or for the provision of Services the Company shall be entitled to invoice the Customer for such Goods or Services on or at any time after delivery of such Goods or Services.

5.2 Unless the Company has agreed some other payment period with the Customer in Writing, the Customer shall pay the price for Goods comprising consumables or for Services or the balance of the price which is outstanding on the price of the Goods comprising software or hardware in accordance with clause 5.1 above (but without any other deduction) within 30 days of the date of the Company's invoice. The time of payment of the price shall be of the essence of the Contract.

5.3 The Company shall be entitled to recover the price of the Goods (plus any applicable value added tax) notwithstanding that property in the Goods has not passed to the Customer.

5.4 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the

- Company, the Company shall be entitled to:
- 5.4.1 cancel the Contract or suspend any further deliveries of the Goods and/or performance of the Services;
- 5.4.2 appropriate any payment made by the Customer to such of its invoices as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- 5.4.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of three per cent (3%) per annum above Barclays Bank plc base rate from time to time, until payment in full for all outstanding amounts due is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 6. RETURN OF GOODS**
- 6.1 When returning Goods pursuant to this Condition 6 the Customer must request a return material authorisation ("RMA") number. Goods sent without a RMA number will not be accepted by the Company and will be returned to the Customer at the Customer's expense. The Company shall not accept the return of Goods unless they include the original undamaged packaging and are complete. All Goods returned must be returned carriage, duty, and taxes paid to one of the Company's approved service points (a list of which is available from the Company on request) failing which the Company shall be under no obligation to credit, repair or to replace the defective Goods.
- 6.2 Goods not required by the Customer, wrongly ordered or ordered in error may only be returned to the Company with prior written approval, and the issue of an RMA number. Where Goods are returned under this Condition the Company reserves the right to charge a restocking fee of 20% of the total list price of the Goods. Goods must be returned carriage paid to the Company, in original unmarked packaging, complete and unused, and with the RMA number clearly attached to the outside of the packaging in a non-destructive manner.
- 7. DELIVERY**
- 7.1 Delivery of Goods shall be made by the Company passing the Goods to such carrier as shall be nominated by the Company with instructions to transport the Goods to the delivery address specified by the Customer. Delivery of Services shall be made by the Company offering such Services at the Customer's site on such date and at such time during normal working hours as agreed by the Company and the Customer.
- 7.2 Any dates quoted for delivery of the Goods and/or provision of the Services are approximate only and the Company shall not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in Writing.
- 7.3 Where the Goods and/or Services are to be delivered or provided in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 7.4 If the Customer fails to accept the Goods and/or fails to give the requested delivery instructions or to provide adequate facilities for the provision of the Services at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
- 7.4.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 7.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract; and/or
- 7.4.3 invoice the Customer for all costs and expenses incurred by it in connection with the delay caused in the provision of the Services.
- 8. RISK AND PROPERTY**
- 8.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time when the Company passes the Goods to its carrier as set out in clause 7.1 above.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and/or Services and all other Goods and Services agreed to be sold by the Company to the Customer for which payment is then due.
- 8.3 Until such time as the property in the Goods passes to the Customer the Customer shall not let, sell, charge or otherwise dispose, transfer or deal with the Goods or any part thereof and the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 9. SERVICES**
- Where the Order includes the provision of Services by the Company it will do so provided that:
- 9.1 the Customer will prior to the provision of Services by the Company prepare the Customer's site to give unrestricted access to any plant and equipment as required for the provision of Services;
- 9.2 the Customer provides all reasonably required assistance for the provision of the Services by the Company;
- 9.3 any overtime spent by the Company's system engineers beyond usual working hours will be charged at 150% of the engineer's standard hourly rate for the provision of services from time to time;
- 9.4 all security, safety and other regulations which apply to the Customer's site are complied with and that the Customer shall indemnify the Company against any direct loss or damage which is caused by any act or omission in regard to such regulations; and
- 9.5 any installation of the Goods and commission of any system comprised therein shall be deemed complete on signing of the Company's service report form by the Customer.
- 10. WARRANTIES AND LIABILITY**
- 10.1 Subject to these Conditions the Company warrants that:-
- 10.1.1 the Goods will correspond with their specification at the time of delivery and will be free from defect in material and workmanship for 12 months or as otherwise specified for the particular product in the Company's published literature or web site;
- 10.1.2 the Services will be carried out with reasonable skill and care.
- 10.2 The Company shall be under no liability:-
- 10.2.1 in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
- 10.2.2 in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, improper storage, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;
- 10.2.3 where any seal has been broken or the Company's trade mark or serial number has been removed, defaced, altered or tampered with unless otherwise agreed in Writing;
- 10.2.4 where any software comprised in the Goods has been used in breach of the Software Licence Agreement;
- 10.2.5 where the Goods have been installed by the Customer but not in accordance with all installation instructions provided by the Company;
- 10.2.6 under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 10.3 The above warranty does not extend to parts, materials, equipment, components or other products not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 10.4 The above warranty does not extend to any loss or damage sustained in transit.
- 10.5 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1994), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.6 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.
- 10.7 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specifications shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the

Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- 10.8 Where any valid claim is notified to the Company in accordance with these Conditions the Company shall be entitled to repair or replace the Goods (or the part in question) and/or carry out corrective installation services free of charge or, at the Company's sole discretion refund to the Customer the price of the Goods and/or Services (or a proportionate part of the price) and the Company shall have no further liability to the Customer.
- 10.9 The Company's liability for damage to tangible property resulting from breach of contract and/or any negligent act or omission of the Company or its employees, agents or sub-contractors shall be limited to £100,000 in respect of any one incident or £500,000 in respect of any series of incidents arising from a common cause.
- 10.10 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation or any other claims for indirect or economic loss whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with any Order for the supply of the Goods and/or the provision of the Services.
- 10.11 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Company's reasonable control.

11. INDEMNITY

- 11.1 Save as is otherwise provided in these Conditions if any claim is made against the Customer that the Goods infringe or that their use infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Company shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:-
- 11.1.1 the Company is given full control of any proceedings or negotiations in connection with any such claim;
- 11.1.2 the Customer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;
- 11.1.3 except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);
- 11.1.4 the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- 11.1.5 the Company shall be entitled to the benefit of, and the Customer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Customer which are payable by or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 11.1.6 without prejudice to any duty of the Customer at common law, the Company shall be entitled to require the Customer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Customer under this clause.

12. COPYRIGHT

- 12.1 The copyright in all documents including (but not limited to) drawings, specifications, manuals and technical information furnished to the Customer by the Company in connection with this Contract shall remain vested in the respective copyright owner and all such documents shall only be used by the Customer for their intended purpose.
- 12.2 All copyright and other intellectual property rights in any software comprised in the Goods shall remain vested in the respective copyright owner, which shall grant to the Customer a non-exclusive non-assignable licence to use such software for the purposes of the operation of the Goods (but not otherwise) on the terms of the Software

Licence Agreement, which will be supplied to the Customer together with any software comprised in the Goods.

13. INSOLVENCY OF CUSTOMER

- 13.1 This clause applies if:
- 13.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 13.1.2 an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Customer; or
- 13.1.3 a winding up petition (if a company) or a bankruptcy petition (if an individual) is presented against the Customer; or
- 13.1.4 the Customer ceases, or threatens to cease, to carry on business; or
- 13.1.5 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; or
- 13.1.6 the Customer is unable to pay its debts as defined in Section 123 of the Insolvency Act 1986; or
- 13.1.7 anything analogous to any of the foregoing under the law of any other jurisdiction occurs.
- 13.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered and/or the Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. GENERAL

- 14.1 The Company shall be entitled to sub contract the provisions of the Services or any part of the Services as it sees fit.
- 14.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 14.3 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 14.5 The Contract shall be governed by the laws of England and any dispute arising under or in connection with these Conditions or the sale of the Goods or the provision of Services shall be subject to the jurisdiction of the English courts.