

Varadis Limited - Terms and Conditions of Sale

Buyer's attention is drawn in particular to the provisions of clause 9.

1. BASIS OF CONTRACT

- 1.1 These conditions of sale (the "Conditions") apply to each and every contract for the sale and purchase of goods between Varadis Limited ("Seller") and the purchaser of such goods ("Buyer") to the exclusion of any other terms that Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of Buyer that is inconsistent with these Conditions.
- 1.2 Buyer's order for the goods or written acceptance of Seller's quotation, (the "Order") constitutes an offer by Buyer to purchase the goods ("Products") set out in the Order in accordance with these Conditions. Buyer is responsible for ensuring that the terms of the Order are complete and accurate. The Order shall only be deemed to be accepted when Seller issues a written acceptance of the Order or, if no written acceptance is issued, dispatches the Products, at which point a contract between Seller and Buyer for the sale and purchase of the Products (the "Contract") shall come into existence.
- 1.3 Any samples, drawings, descriptive matter or advertising produced by Seller and any descriptions or illustrations contained in Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force. A quotation given by Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

2. SPECIFICATION

- 2.1 The Products are described in Seller's catalogue as modified by any applicable specification agreed in writing by the parties (the "Specification"). Buyer is responsible for ensuring that the terms of any Specification are complete and accurate.
- 2.2 To the extent that Products are to be manufactured or assembled in accordance with a Specification supplied by Buyer, Buyer shall indemnify Seller against all liabilities, costs, expenses, damages and losses suffered or incurred by Seller in connection with any claim made against Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Seller's use of the Specification. This clause 2.2 shall survive termination of the Contract.

3. DELIVERY OF PRODUCTS

- 3.1 Delivery shall be DAP (Incoterms 2010). Seller shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Seller notifies Buyer that the Products are ready and Delivery is completed on the completion of unloading of the Products at the Delivery Location.
- 3.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 3.3 If Seller fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products.
- 3.4 Seller may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle Buyer to cancel any other instalment. Buyer must notify Seller of any short delivery within 5 days of Delivery failing which Buyer will be deemed to have accepted Delivery with the full price of the Order due and payable to Seller. Where Delivery is to occur by way of 'call-off' by Buyer the entire Order must be drawn down within 12 months of the date of the Order failing which Seller may Deliver the balance of the Products to Buyer and invoice accordingly.

4. QUALITY

- 4.1 Seller warrants that on delivery, the Products shall conform in all material respects with the Specification.
- 4.2 Subject to clause 4.3, if:
 - (a) Products do not comply with the warranty set out in clause 4.1 and Buyer gives notice in writing to Seller of such non-compliance within 1 year of delivery; and
 - (b) Buyer (if asked to do so by Seller) returns such Products to Seller's place of business at Buyer's cost,Seller shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.
- 4.3 Seller shall not be liable for the Products' failure to comply with the warranty set out in clause 4.1 in any of the following events:
 - (a) Buyer makes any further use of such Products after giving notice in accordance with clause 4.2;
 - (b) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of Seller following any drawing, design or Specification supplied by Buyer;
 - (d) Buyer alters or repairs such Products without the written consent of Seller;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (f) the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 4.4 Without prejudice to the generality of clause 4.3, Seller shall not be liable if the Products are used outside of the specified tested environments as outlined in product instructions or datasheets. All precautions as specified in these documents

must be adhered to.

- 4.5 Except as provided in this clause 4, Seller shall have no liability to Buyer in respect of the Products' failure to comply with the warranty set out in clause 4.1.
 - 4.6 The terms implied by law are, to the fullest extent permitted by law, excluded from the Contract.
 - 4.7 These Conditions apply to any repaired or replacement Products supplied by Seller.
- ## 5. USE IN CERTAIN APPLICATIONS:
- 5.1 Products sold by Seller are not designed for use in life support and/or safety or other equipment where malfunction of the product can reasonably be expected to result in personal injury or death, including without limitation, medical implantation or other direct life support (collectively, "Life Support Applications"). If Buyer chooses to use or sell such Products for use in Life Support Applications at Buyer's own risk, Buyer agrees to defend, indemnify and hold Seller harmless from any and all damages, claims, suits or expense resulting from such use.
- ## 6. TITLE AND RISK
- 6.1 The risk in the Products shall pass to Buyer on completion of delivery.
 - 6.2 Subject to clause 6.3, title to the Products shall not pass to Buyer until Seller receives payment in full (in cash or cleared funds) for the Products and any other goods that Seller has supplied to Buyer, in which case title to the Products shall pass at the time of payment of all such sums.
 - 6.3 Ownership of any Products consisting of software shall remain with Seller and Buyer's rights in respect of such software will be as specified in a separate license agreement between Sellers and Buyer included in or otherwise accompanying a release or download of such software.
 - 6.4 Until title to the Products has passed to Buyer, Buyer shall:
 - (a) store the Products separately from all other goods held by Buyer so that they remain readily identifiable as Seller's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify Seller immediately if it becomes subject to any of the events listed in clause 8.1; and
 - (e) give Seller such information relating to the Products as Seller may require from time to time.
 - 6.5 Subject to clause 6.6, until title passes in accordance with clause 6.2, Buyer holds the Products as bailee of Seller. Buyer may resell or use the Products in the ordinary course of its business (but not otherwise) before Seller receives payment for the Products. However, if Buyer resells the Products before that time:
 - (a) it does so as principal and not as Seller's agent;
 - (b) title to the Products shall pass from Seller to Buyer immediately before the time at which resale by Buyer occurs; and
 - (c) Buyer shall pay all proceeds of sale into a separate account or, otherwise, shall ensure that all the proceeds of sale are kept by or on behalf of 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, Buyer shall discharge the debt due to Seller and shall not use or deal with the proceeds of sale in any way whatsoever until such debt has been discharged.
 - 6.6 If before title to the Products passes to Buyer Buyer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy Seller may have:
 - (a) Buyer's right to resell the Products or use them in the ordinary course of its business ceases immediately; and
 - (b) Seller may at any time:
 - (i) require Buyer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if Buyer fails to do so promptly, enter any premises of Buyer or of any third party where the Products are stored as licensee in order to recover them.

7. PRICE AND PAYMENT

- 7.1 The price of the Deliverables shall be the price set out in the Order, or, if no price is quoted, the price set out in Seller's published price list in force as at the date of delivery Provided that Seller shall have the right to charge a surcharge where the quantity of Products in an Order does not meet the minimum order value or minimum order quantity of the manufacturer.
- 7.2 Seller may, by giving notice to Buyer at any time up to 14 days before delivery, increase the price of the Deliverables to reflect any increase in the cost of the Deliverables that is due to:
 - (a) any factor beyond Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by Buyer to change the delivery date(s), quantities or types of Deliverables ordered, or the Specification; or
 - (c) any delay caused by any instructions of Buyer or failure of Buyer to give Seller adequate or accurate information or instructions.
- 7.3 The price of the Deliverables:
 - (a) excludes amounts in respect of value added tax (VAT), which Buyer shall additionally be liable to pay to Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) excludes the costs and charges of packaging, insurance and transport of the Deliverables, which shall be invoiced to Buyer.
- 7.4 Payment must be made in full at the time of placing the order, except where satisfactory open account credit is established, in which case terms of payment are

net thirty days from the date of invoice. Open account credit must be established prior to the purchase of Products. Seller reserves the right at any time to revoke any credit extended to Buyer for any risk deemed good and sufficient by Seller.

- 7.5 Payment shall be made to the bank account nominated in writing by Seller. Payment shall be made in Euro or such other currency as is stated on the invoice. Time of payment is of the essence.
- 7.6 If Buyer fails to make any payment due to Seller under the Contract by the due date for payment, then Buyer shall pay interest on the overdue amount at the rate of 4% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Buyer shall pay the interest together with the overdue amount.
- 7.7 Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Buyer against any amount payable by Seller to Buyer.

8. TERMINATION

- 8.1 Without limiting its other rights or remedies, Seller may terminate this Contract with immediate effect by giving written notice to Buyer if:
- (a) Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (d) Buyer's financial position deteriorates to such an extent that in Seller's opinion Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (e) it is not possible for Seller to obtain the Products comprising the Order in sufficient quantities and at a price which allows Seller to fulfil the Order without incurring a loss.
- 8.2 Without limiting its other rights or remedies, Seller may suspend provision of the Deliverables under the Contract or any other contract between Buyer and Seller if Buyer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or Seller reasonably believes that Buyer is about to become subject to any of them, or if Buyer fails to pay any amount due under this Contract on the due date for payment.
- 8.3 Without limiting its other rights or remedies, Seller may terminate the Contract with immediate effect by giving written notice to Buyer if Buyer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 8.4 On termination of the Contract for any reason Buyer shall immediately pay to Seller all of Seller's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude Seller's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any matter in respect of which it would be unlawful for Seller to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) Seller shall under no circumstances whatsoever be liable to Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect, special, incidental, punitive or consequential loss arising under or in connection with the Contract, including without limitation damages for loss of profits, revenue, data, cover, loss or interruption of business of Buyer or any other party arising out of or in connection with the delivery, use or performance of the Products even if Seller has been advised of the possibility of such damages;
 - (b) Seller's total liability to Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products comprised in the applicable Order under which the claim arises.

10. FORCE MAJEURE

- 10.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of a party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of that party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- 10.2 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for two months, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

11. CONFIDENTIALITY

- 11.1 "Confidential Information" means all information pertaining to any aspect of a Party's business which either is (i) not known by actual or potential competitors of the Party or (ii) proprietary information of the Party or its customers or suppliers or (iii) proprietary information of third parties in respect of which the Party, its employees or consultants have obligations of confidentiality, whether of a technical nature or otherwise.
- 11.2 During the course of this agreement, the Parties may disclose Confidential Information to each other.
- 11.3 Each Party shall keep the Confidential Information of the other Party strictly confidential and shall, subject to Clauses 11.4 not disclose Confidential Information to any third party provided that Seller may disclose Confidential Information to any party to whom it has sub-contracted its obligations hereunder to the extent necessary to allow the sub-contractor perform such obligations..
- 11.4 The obligations in Clause 11.2 shall not apply to Confidential Information which (i) is within the public domain, (ii) is required to be disclosed by law or (iii) is lawfully received from a third party free to disclose such information and which the receiving Party can demonstrate and verify in writing was so lawfully received.

12. GENERAL

12.1 Assignment and other dealings.

- (a) Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Seller.

12.2 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

- 12.3 **Use of Buyers Name.** Unless specifically agreed otherwise, the seller reserves the right to use the buyers/company name in company promotional material such as brochures, websites, flyers and so forth.

- 12.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 12.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy nor prevent or restrict the further exercise of that or any other right or remedy.

- 12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.7 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid post or other next working day delivery service, commercial courier, or fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.7(a); if sent by pre-paid post or other next working day delivery service, at 9.00 am on the second day (other than a Saturday, Sunday or public holiday) after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, the next day (other than a Saturday, Sunday or public holiday) after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

Governing law and Jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Ireland and each party submits to the exclusive jurisdiction of the Irish Courts.