

COBALT SYSTEMS LTD - CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions, the following words or abbreviations shall have the following meanings unless expressly stated otherwise.

- (a) COBALT shall mean Cobalt Systems Ltd whose address and official registered office for the purpose of this Agreement shall be Cobalt House, Arden Sq, Crewe Business Park, Crewe, Cheshire CW1 6HA.
- (b) "the customer" shall mean the person, firm or company who contracts with COBALT for the sale and supply by COBALT of equipment.
- (c) "Equipment" shall mean and include all machinery, change parts, tools, manuals, instructions, packing, mountings, conduit cables, wires or other things connected or supplied for the proper functioning of the Equipment as specified and agreed between the parties.
- (d) "Quotation" shall mean written details of the price at which Equipment will be supplied by COBALT to the Customer subject to the conditions hereof.
- (e) "Contractual Documents" shall include (but not necessarily be limited to) quotations, orders, acceptance and these Conditions.
- (f) "COBALT" and "the Customer" shall in all cases where the context so permits include their authorised agents and sub-contractors, their employees and successors and assigns.
- (g) Where the context so admits any word expressed in the singular shall include the plural and vice versa.

2. APPLICATION OF CONDITIONS

- (a) COBALT contract for the sale and supply of Equipment subject to the Conditions set out herein which shall supersede any terms inconsistent herewith forming part of any offer, counter offer, acceptance or any instructions received from the Customer.
- (b) COBALT contract of the sale and supply of Equipment subject to the Conditions set out herein shall not be superseded unless prior written agreement has been provided by a Director of COBALT.
- (c) No representation, undertaking or warranty given by COBALT shall be binding unless set out herein or, subsequent to the acceptance hereof, be set out separately in writing and signed by duly authorised representatives of both parties.
- (d) These conditions shall not apply to a Distributor who has an individual contract with COBALT for the supply to it by COBALT of the Equipment.

3. QUOTATIONS, ORDERS AND ACCEPTANCES

- (a) Quotations will be given by COBALT in writing and shall remain valid for a period of 30 days from the date of issue and thereafter be deemed invalid but subject to review. All prices quoted are ex-works exclusive of carriage, transit, packing, insurance and VAT.
- (b) Quotations shall not be deemed to bind COBALT or form any contractual liability unless and until the Customer makes an order in writing and which order is accepted by COBALT in accordance with clause 3(c) hereof.
- (c) Orders made by the Customer to COBALT shall not bind COBALT or form any contractual liability unless and until such order is accepted by COBALT in writing in which case these Conditions shall apply.
- (d) COBALT reserves the right to revise or alter Quotations before order and acceptance in the event of any unforeseen rise in the cost to COBALT of manufacture and supply of Equipment.
- (e) The Customer warrants that information supplied to COBALT for the purpose of Quotation is accurate and correct but in the event that information so supplied proves incorrect or inaccurate or different in practice COBALT reserve the right to revise all costs and prices by way of fresh Quotation, which Quotation shall be deemed the only Quotation for the purpose of this Agreement. In the event that work has commenced on Equipment by COBALT on inaccurate or incorrect information or information proving different in practice supplied by the Customer, COBALT reserve the right to cease work and notify the Customer accordingly and the Customer from the date of such notification shall be liable for all costs, expenses and other charges incurred by COBALT to that date which sum shall be payable in accordance with the conditions for payment hereinafter contained.
- (f) COBALT warrants that all quotations will be prepared and given in good faith and all reasonable care will be taken in their accuracy but in any event COBALT reserve the right to alter construction, materials, sizes and weights of Equipment described in any Quotation, literature or advertisement which may include approximations and do not form a part of any contract unless specified therein.
- (g) Quotations, orders and acceptances will be in line with INCOTERMS 2010.

4. PRICES, PAYMENT AND CHARGES

- (a) The Customer shall pay to COBALT all pre agreed charges due for the sale and supply of consumables, spares and service, together with taxes and charges due thereon within 30 days of the date of delivery, unless otherwise agreed between the parties in writing. For capital equipment orders the terms will be 50% payable upon order against COBALT first invoice
45% payable prior to despatch or delivery against COBALT second invoice
5% payable on COBALT final invoice for acceptance or 60 days from installation, whichever comes first. And COBALT reserves the right to charge a fixed penalty of up to £100 and interest on all amounts overdue at 8% over Bank of England base lending rate.
- (b) No deduction shall be made by the Customer from COBALT invoices or charges for any reason whatsoever. The existence of claims or purported claims against COBALT shall not be a valid reason for withholding payment.
- (c) All Equipment shall remain the property of COBALT until payment by the Customer of all charges. Delivery of Equipment shall not constitute the passing of title by COBALT and COBALT reserve the right to repossess such Equipment or part thereof against any unpaid charges or sums remaining due after a period of sixty days from the time when undisputed payment was due.
- (d) Purchase orders placed with COBALT are treated as divisible. Each delivery made thereunder: shall be deemed to arise from a separate contract, and shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for therein without reference to and notwithstanding any defect or default in the delivery of any other instalment or of any other instalment under any other contract.

5. GUARANTEES

In respect of Equipment sold COBALT make the following express guarantee but exclude any other implied warranty, condition or liability:-

- (a) Where defects arise which are attributable to faulty materials of workmanship WITHIN SIX MONTHS or 1200 operating hours (whichever comes first) of delivery to the Customer then COBALT or those contracted on its behalf will repair or replace free of charge any part or parts which COBALT at its sole discretion consider to be defective and within the terms of this guarantee.
- (b) No claim for exchange or repair will be considered by COBALT unless such claim is notified in writing to COBALT by the Customer detailing the full description of the claim and clearly identifying the part or parts in question and upon authority from COBALT all parts in question shall be sent to COBALT carriage paid clearly identified and packaged for transit.
- (c) COBALT shall not be obliged to repair Equipment or parts of Equipment which in its view have been damaged by:-
 - (i) Neglect or other misuse by the Customer
 - (ii) Fair wear and tear
 - (iii) Removal of the part or parts from the Equipment by the Customer.

- (d) This guarantee shall not cover parts which have been modified by the Customer or anyone other than COBALT or parts which have been replaced with parts of another origin from those initially supplied.
- (e) The decision of COBALT in all cases of claims and all questions as to defects shall be final and conclusive which decision shall be notified to the Customer in writing COBALT reserve the right to scrap the said part or parts 90 days after notification.

6. DELIVERY

Unless otherwise agreed, delivery of Equipment will be made by COBALT at Arden Square. Delivery dates are subject to confirmation and may be varied by COBALT on giving reasonable notice to the Customer in writing. Where delivery is agreed at a place other than Arden Sq, the Customer will be responsible for all costs or charges in connection therewith and COBALT accept no liability for the carriage of the Equipment whether the same was undertaken by COBALT or its appointed carrier of the Customer's choice. At delivery, the risk passes to the Customer albeit the Equipment remains the property of COBALT under the terms of clause 4(c) hereof.

7. INSTALLATION

COBALT will undertake delivery of the Equipment on the "Agreed Date" which will be notified to the Customer in writing within seven days of the intended agreed date of installation. Installation will be subject to the following conditions:-

- (a) A pre agreed charge for labour, materials or other incidental expenses as set out in COBALT rate schedules which COBALT reserve the right to alter at any time.
- (b) Where requested by the Customer Quotations will be given for installation, such Quotations being subject to the provisions contained in clause 3 of this Agreement and paragraph (a) of this clause.
- (c) The Customer will ensure that COBALT has access to the site and all pre agreed facilities for the installation, fitting and movement of Equipment, testing and commissioning or other facilities as specified by COBALT and as reasonably required by them.
- (d) COBALT will not be responsible for making good other works or other trades responsibility.
- (e) The Customer will provide adequate insurance cover for COBALT on site and will in any event indemnify COBALT against any costs, claims, demands or other expenses incurred by COBALT as a result of the negligence or other actions of the Customer.

8. DRAWINGS, MODELS & ILLUSTRATIONS

Any drawings, models or illustrations or other information issued by COBALT or contained in price lists or other literature shall be treated as the property of COBALT and the Customer shall take all necessary and proper steps to ensure that the same are returned in good condition and that no copies are taken and no details are given to third parties and shall at all times do all things necessary to protect any copyright held by COBALT and to bring to the attention of COBALT any potential breaches of copyright or patent or any other interference by others which may prejudice or otherwise affect the interest of COBALT.

9. LIABILITY

Subject to the other terms of this Agreement:-

- (a) COBALT shall not be liable for any loss, damage, cost or expense suffered by the Customer arising out of defective Equipment, its installation, use, loss or mis-delivery of Equipment or parts where it is shown that such event has arisen from:-
 - (i) Act of God
 - (ii) Any consequence of war, invasion, act of foreign enemy, hostilities, (whether war be declared or not) civil war, rebellion, insurrection, military or usurped power or confiscation, requisition, destruction of or damage to property or under the order of any Government or Public or Local Authority.
 - (iii) Seizure under legal process.
 - (iv) The act or omission of the Customer or those for whom he contracts or of the servants or agents of either.
 - (v) Natural deterioration of the Equipment.
 - (vi) Inadequate or improper packing of the whole or part of the Equipment being returned to COBALT.
 - (vii) Insufficient or incorrect labelling or addressing by the Customer.
 - (viii) Riot, civil commotion, lock outs, general or partial stoppage or restraint of labour from whatever causes.

- (b) COBALT shall not incur liability of any kind in respect of Equipment where there has been misrepresentation on the part of the Customer in respect of the Equipment.
- (c) No liability shall extend to COBALT in respect of drawings, descriptions, specifications or modifications relating to the manufacture or assembly of the Equipment which have been supplied or specified by the Customer.
- (d) COBALT shall not, under any circumstances, be liable in respect of:-
 - (i) Loss or damage to the Equipment whatsoever and howsoever arising except as specifically provided under these conditions.
 - (ii) Consequential or economic loss or loss of profits or loss of a particular market.
 - (iii) Any other loss, damage, cost or expense incurred or suffered by the Customer whatsoever (whether or not contributed to by COBALT negligence) save that COBALT shall not be excluded from liability in respect of damages for death or personal injury caused by its negligence.

10. INDEMNITY

The customer will keep COBALT indemnified against all claims or demands whatsoever, by whomsoever made, which are caused by the neglect or default of the Customer or any breach by the Customer of its obligations under these Conditions.

11. GENERAL

- (a) Termination
Termination can be issued by either party at any time by giving 60 days notice.
- (b) Arbitration
In the event of any dispute between the parties in connection with these Conditions, the same shall be referred to the decision of a single arbitrator who will be based in Manchester which will be agreed between the parties or failing such agreement, two arbitrators, (one to be appointed by each of the parties) such arbitration to be conducted pursuant to the provisions of the Arbitrations Act as in force at that time.
- (c) Any notices required to be given and any account rendered by COBALT shall be deemed to have been given or tendered if sent by pre-paid letter post addressed to the Customer with signed acceptance or delivered and accepted by hand to his last known address.
- (d) These Conditions, or any Agreement based thereon and the rights and obligations of the parties, shall be governed by and construed in accordance with English Law.
- (e) In the event of legal proceedings being brought due to non-payment for goods, service or hire, regardless of reason, by the Customer, COBALT will seek full re-imbursment for any costs relating to legal action taken by, or on behalf of, COBALT or their subsidiary or appointed Agent in concluding the contract with the Customer.