

# Colorbus-online Ltd (CBOL)

## STANDARD CONDITIONS OF TRADE

\* In these Conditions:

Authorised Officer :	means a person whose position with CBOL is that of Chairman, Director, Customer Services Manager or Credit Manager of CBOL
Backorder :	means an Order where the Goods are not available at time of Order placement and which are still to be acquired by CBOL from its main supplier
Buyer :	is the person who places an Order with CBOL for the purchase of the Goods or the provision of the Services and whose order is accepted by CBOL in accordance with these Conditions
Conditions :	are these terms and conditions of trade, any special terms and conditions on the face of the CBOL's tender or the CBOL's written acceptance of the Buyer's order , the conditions and terms of use governing the use by the Buyer of CBOL's web site and the terms and conditions of any supplier of the CBOL, copies of which shall be made available on request (as the case may be)
Contract :	is each individual Contract for the purchase and sale of the Goods or the provision of the Services entered into between the CBOL and the Buyer of which the Conditions form part
Delivery :	means the delivery of the Goods being the carrier's notification to the Buyer that the Goods are ready to be off-loaded at the address supplied by the Buyer for delivery or, in the case of Goods for export, delivery shall be fob at the air or sea port of shipment unless agreed otherwise in writing by CBOL
Goods :	are the goods (including any instalment of the goods or any parts for them) which CBOL is to supply including any equipment, machinery, parts, spares, software and any other goods supplied by CBOL (and where appropriate goods, materials or services used on or in relation to the Contract);
Order :	is the Buyers order for the Goods or Services placed with CBOL under condition 2.3 below
Services :	the Services to be provided by CBOL to the Buyer under these Conditions;
CBOL :	is Colorbus Online Limited of Arrowhead Park, Arrowhead Road, Theale, Reading, RG7 4AH.

The headings in these Conditions are included for convenience only and shall not affect the interpretation or construction of these Conditions.

### 1. BASIS OF THE SALE / PROVISION OF SERVICES

1.1 All Goods are sold subject to the CBOL's prior approval of the Buyer's credit and to the Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any Order is accepted or purported to be accepted, or any Order is made or purported to be made, by the Buyer.

1.2 No variation to these Conditions shall be binding unless agreed in writing by an Authorised Officer of CBOL.

1.3 Other than those made by an Authorised Officer, CBOL's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Authorised Officer in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any such representations which are not so confirmed (unless such representations were fraudulently made).

1.4 Any advice or recommendation given by CBOL or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Authorised Officer is followed or acted upon entirely at the Buyer's own risk and, accordingly, CBOL shall not be liable for any such advice or recommendation which is not so confirmed.

1.5 All references in these Conditions to CBOL agreeing, approving, waiving or specifying a matter apply only if such is confirmed in writing by an Authorised Officer of CBOL

1.6 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 CBOL shall be subject to correction without any liability on the part of CBOL.

1.7 All implied terms shall be excluded to the fullest extent permitted by law. It is the Buyer's responsibility to be aware of the Conditions as current from time to time. The Buyer is invited to contact an Authorised Officer at any time for a copy of the Conditions, which shall be made available to the Buyer upon receipt of such request. The Buyer shall be taken to have accepted these Conditions, which shall cover all and any Contracts entered into by and between CBOL and the Buyer by either (i) signing CBOL's credit account application form (as may be required by CBOL should credit be required) or (ii) placing an order for the Goods or Services which is accepted by CBOL in accordance with these Conditions.

## **2. QUOTATIONS AND FORMATION OF CONTRACTS**

2.1 All Contracts between CBOL and Buyer shall be governed by these Conditions to the exclusion of any other terms and conditions including without limitation any terms on or referred to in any purchase order.

2.2 Neither (a) additions to nor modifications of these Conditions nor (b) any other terms and conditions in any document or other communication of/with the Buyer shall form part of the Contract unless specifically referred to in these Conditions or unless an Authorised Officer of CBOL has agreed with the Buyer in writing to vary these Conditions.

2.3 In preparing any quotation, CBOL shall be entitled to ask the Buyer for, and the Buyer shall provide within 15 working days, such information as CBOL may require in its absolute discretion. It shall be a condition of any quotation that the information provided by the Buyer is correct, accurate, not misleading and a complete response to CBOL's request(s) when provided and remains so for at least until the later of the date when the quotation lapses or the relevant Goods and/or Services are delivered.

2.4 The Buyer shall indemnify CBOL in full against all losses, costs, damages, claims, charges and/or expenses (including without limiting effect any obligation to pay any sum(s) to the relevant manufacturer(s) of relevant Goods or the provider of relevant Services) incurred by CBOL as a result (whether directly or indirectly) of information provided by the Buyer in accordance with Clause 2.3 being or subsequently becoming incorrect, inaccurate, misleading and/or incomplete or of the Buyer acting other than in accordance with such information.

2.5 CBOL's acceptance of all Backorders shall be subject to CBOL's approval of the Buyer's credit status.

2.6 The quantity and description of and any specification for the Goods shall be those set out in the CBOL's quotation or CBOL's acceptance of the Buyer's Order. The Buyer shall be responsible for ensuring the accuracy of the terms of any Order and for giving CBOL any necessary information (which shall include the tasks which the Goods shall be required to perform) within a sufficient time to enable CBOL to perform the Contract.

## **3. CANCELLATION OF ORDERS**

3.1 No Order (including Backorders) which has been accepted by CBOL may be cancelled by the Buyer except with the agreement in writing of CBOL and on terms that the Buyer shall indemnify CBOL 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 CBOL as a result of cancellation. Without limiting its rights under this Condition in any way, CBOL reserves the right to charge the Buyer a lost profit charge of up to 25% of the price of the Goods or Services should the Buyer cancel the Order without prior written agreement of CBOL.

## **4. TERMINATION**

4.1 CBOL shall have the right immediately to cancel or to suspend any Order accepted or any delivery to be made under the Contract without any liability to the Buyer and, if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:

4.1.1 the Buyer fails to make any payment when due or breaches any provision of the Contract and the Buyer has failed to remedy such breach within 30 days after receipt of notice in writing from CBOL requiring the Buyer to do so;

4.1.2 the Buyer makes or threatens to make 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; or an encumbrance takes possession, or a receiver, administrative receiver or administrator or any similar official under any overseas jurisdiction is appointed in respect of the whole or any part of the assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or CBOL reasonably apprehends that any of these events is about to occur in relation to the Buyer;

4.1.3 the Buyer commits or is a party to dishonest or fraudulent conduct in relation to the Contract;

4.1.4 there is any distress or execution being levied upon the Buyer's property or assets, which is not discharged within 14 days.

4.2 The right of termination given by Clause 4.1 shall be without prejudice to any other right or remedy of either party in respect of any breach committed under the terms of this Agreement, which are expressed to survive termination and any provisions of the Contract necessary for the interpretation or enforcement of the Contract.

4.3 CBOL shall have the right immediately to cancel or to suspend any Order accepted or any delivery to be made under the Contract without any liability to the Buyer if CBOL is unable to perform the Contract due to circumstances out of its control including but not limited to the circumstances listed in condition 6.1 below.

## **5. DELIVERY**

5.1 Unless otherwise agreed in writing with an Authorised Officer the costs of packing and delivery (including costs of carriage, cases and materials) shall be for the Buyer's account. If CBOL pays for or incurs all or part of such costs, it shall invoice its costs so incurred to the Buyer at the date of dispatch. If CBOL delivers the Goods (as opposed to using a carrier to do so) it will invoice the Buyer at CBOL's standard rate then in force.

5.2 The Buyer warrants the details of any address for delivery stipulated by the Buyer. CBOL reserves the right to charge the Buyer for any losses incurred by CBOL for failed deliveries/re-routed deliveries where the Buyer has provided incorrect/inaccurate details of the delivery address, this is to include failed deliveries where the recipient is not available or is unwilling to accept the Goods (such charges to cover the loss of profit incurred by CBOL).

5.3 Any dates given for the delivery of the Goods are approximate only and CBOL shall not be liable for any loss, direct or indirect, which may arise from delay in Delivery of the Goods howsoever caused. Time for Delivery shall not be of the essence and the Buyer shall not be entitled to cancel the Contract by virtue of late Delivery. The estimated Delivery time shall be calculated as from the date of CBOL's acceptance of the Buyer's Order and (where required by CBOL) any payment, samples, information, licenses and consents necessary to proceed with the Order have been supplied by the Buyer. Changed specifications or instructions may result in changes to estimated Delivery times.

5.4 The Goods may be delivered in instalments. Each delivery shall constitute a separate Contract and failure by CBOL to deliver any one or more of the instalments (or faulty Goods) in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

5.5 If the Buyer's carrier or other third party nominated by the Buyer fails to take receipt of the Goods after being notified that the Goods are ready for Delivery or fails to give CBOL adequate Delivery instructions at the time stated for Delivery or has requested a delay in Delivery or the Buyer is unable to give access to its premises for the purposes of Delivery or installation then CBOL may at the risk and expense of the Buyer:

5.5.1 store the Goods until actual Delivery and charge the Buyer for the costs (including insurance and transport costs) of storage and re-Delivery; or

5.5.2 sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer for the excess over sums owing by the Buyer or charge the Buyer for any shortfall.

The date of the Goods being put into storage shall be deemed to be the date of Delivery and, unless the Goods have already been paid for, the Buyer shall be invoiced for the Goods at that date. Once the Goods are in storage, CBOL will not have any obligation to take any further steps in relation to the Goods, unless and until has received full written instruction from the Buyer.

5.6 Where Goods are to be exported out of the United Kingdom by CBOL to the Buyer or by the Buyer to the Buyer's order the provisions of this clause 5.6 shall (subject to any special terms agreed in writing between the Buyer and the CBOL) apply notwithstanding any other provision of these Conditions: -

(i) The terms of purchase will be subject only to the manufacturers warranty and the Buyer shall be solely responsible for ensuring that it fully understands and is aware of such warranty terms.

(ii) The relevant tax legislation will be applied in accordance with and under the United Kingdom legislation at the time of the contract.

(iii) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

(iv) Unless otherwise agreed in writing between the Buyer and the CBOL, the Goods shall be delivered fob at the air or sea port of shipment and the Buyer shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

(v) the Buyer shall be responsible for arranging for testing and inspection of the Goods at the CBOL's premises before shipment. The CBOL shall have no liability for any claim in respect of any defect in the Goods, which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

(vi) The Buyer shall not be entitled to withhold payment of the price for the Goods due to the Buyer's failure to comply with the provisions of this clause.

(vii) The Goods will be packaged in accordance with the CBOL's standard practice, and the packaging shall meet any reasonable requirements stipulated in advance by any independent contractors or shippers.

5.7 The Buyer's failure to make due payment in respect of any deliveries or instalments under any Contract shall entitle CBOL to delay, suspend or cancel deliveries in whole or in part as its option.

5.8 In no case shall any dispute concerning (1) any item or separate part of the Goods or work (2) any other contractual obligation or liability of CBOL to the Buyer affect the Buyer's obligation in respect of payments to be made under these Conditions

5.9 Where the Buyer is unwilling to take Delivery of the whole quantity of the Goods at the due time, then any discount or other allowance in respect of the Goods, which is or would be otherwise be allowed to the Buyer shall be forfeited by the Buyer.

## **6. ACCEPTANCE AND RETURNS PROCEDURE**

6.1 CBOL shall not be liable in respect of any damage to the Goods, discrepancy in the Buyer's order, shortage in the Goods Delivered, loss of the Goods in transit or any claim that the Goods delivered or collected do not otherwise comply with the Contract other than in accordance with this Condition and the Warranty clause referred to below.

6.2 Damage, discrepancies, shortages and Invoice Queries:

(i) The Buyer shall be responsible for inspecting the boxed / parcel contents containing the Goods on Delivery to check the Goods for damages, discrepancies and shortages.

(ii) The contents of CBOL's invoice including the price for the Goods, Goods description, Delivery charge or any other invoice related query (with the exception of those referred to in (iii) below), shall in the absence of a manifest error, be deemed to have been accepted by the Buyer as correct unless the Buyer notifies CBOL Customer Services in writing within 14 days of the date of CBOL's invoice.

(iii) The Buyer shall notify CBOL Customer Services in writing within 48 hours of Delivery of any short Delivery of Goods, any damaged Goods Delivered or any non shipment of Goods detailed on the proof of Delivery.

Save for the receipt by CBOL of the Buyers' notification under (ii) and (iii) above, CBOL shall have no liability whatsoever to the Buyer in respect of any discrepancies on CBOL's invoice or any claims for short Delivery or damaged Goods and the "deliveries" or "arrivals" note signed by the Buyer, or its customer, or agent indicating that the Goods are in good order on arrival shall be conclusive proof of the same and shall bind the Buyer.

6.3 Goods that fail on installation ("DOA's"):

CBOL operates a returns procedure for D.O.A's. Further details of the D.O.A returns procedure are available on written request. The D.O.A returns procedure may vary depending on the manufacturer of the Goods and will be notified to the Buyer upon the Buyer notifying CBOL that the Goods have apparently failed on installation.

#### 6.4 Goods that fail after installation ("Faulty Goods"):

In no circumstances may the Faulty Goods be returned to CBOL by the Buyer without the prior written consent of CBOL. Where Goods are returned a handling charge reasonably specified by CBOL will, at CBOL's discretion, be either deducted from any credit allowed by CBOL or be payable to CBOL by the Buyer upon demand. The Buyer must notify CBOL of the fault becoming apparent and follow the instructions notified to it by CBOL in relation to the fault.

#### 6.5 General provisions relating to D.O.A's and Faulty Goods:

(1) The Buyer shall pay all CBOL's reasonable costs and expenses (to be quoted by CBOL) if the Goods suspected to be D.O.A or Faulty Goods prove not to be D.O.A or Faulty Goods. (2) The Buyer shall be responsible for all transportation and insurance costs relating to returned Goods. (3) CBOL shall not be responsible for installation of returned Goods after repair or exchange. (4) Any labour costs and expenses incurred in extracting defective parts and/or components shall be borne by the Buyer and if incurred by CBOL shall be paid for by the Buyer at CBOL's then standard applicable rate. (5) The Buyer shall also be responsible for all CBOL's costs if CBOL agrees to collect the Goods for return and such Goods are not ready for collection at the agreed time.

6.6 Where approved in writing by CBOL, the Goods or part of the Goods to be returned must be delivered to CBOL's premises in its original packaging together with supporting documentation showing full description of the alleged fault and quoting the relevant returns number. In the event that the Buyer fails to comply with this requirement then CBOL will be entitled to charge a 15% minimum handling fee upon authorised return of the Goods.

6.7 CBOL shall be under no obligation to accept return of any Goods other than as provided in the warranty clause.

### **7. PRICE**

7.1 All CBOL prices ("Price") are quoted subject to acceptance within any period specified and to any increase which may occur as a result of factors falling outside the control of CBOL, which without limitation, shall include any of the following circumstances:

(a) where the Buyer has requested (whether before or after a Contract has been made) any variation whatsoever to the quantity, capacity, form, content, style or description of the Order or Goods and/or, or has requested an earlier or a later Delivery date to that originally specified; or

(b) where the steps are taken by CBOL to comply with any statutory provisions from time to time in force, and any increases in the price charged to CBOL of any equipment or goods bought in from outside suppliers so as to enable CBOL to fulfil the Contract; or

(c) where the supply of the Goods or the provision of Services is suspended, varied or otherwise delayed by the Buyer, including without limitation, any delay caused by:

(i) failure to provide CBOL with sufficient information to enable CBOL to proceed with, or to complete the supply of the Goods and/or the provisions of the Services; or

(ii) increases Delivery charges; or

(iii) increases in the costs of insurance for the Goods; or

(iv) any special or extraordinary handling charges; or

(v) changes in exchange rates.

7.2 Unless otherwise stated, the costs of Delivery and VAT and any other applicable customs or excise duties or taxes (where applicable) will be added to all invoices at the rate ruling at the date of despatch, which will be added and shall be payable by the Buyer in accordance with the law applicable from time to time against an appropriate invoice.

### **8, PAYMENT**

8.1 Payment of the Price or any part thereof and any other charges due under the Contract must be made by the Buyer within 28 days from the date of CBOL's invoice (unless otherwise specified in writing by an Authorised Officer).

8.2 CBOL shall be entitled to charge interest on all late payments by the Buyer on any money which is not paid by the Buyer to the CBOL under the Conditions by the due date for its payment ("the Due Date for Payment"). Such interest shall accrue and be calculated on a daily basis from the Due Date for Payment, both before and after any judgement and until the date on which it is actually paid., at a rate equivalent to the rate prevailing at the Due Date for Payment as prescribed by the Secretary of State pursuant to section 6 of The Late Payment of Commercial Debts (Interest) Act 1998. Interest shall be compounded quarterly and be payable on demand.

8.3 All overdue debts shall be subject to an administration charge of 5% of the total account balance.

8.4 The Buyer shall make all payments in Pounds Sterling immediately when due without set off, deferment, deduction or withholding whatsoever (whether on account of any claim or counterclaim or otherwise). Where payments in an alternative currency are authorised in writing by the Authorised Officer prior to the contract being concluded, such payments shall be made by telegraphic transfer to the account to be designated by the Authorised Officer from time to time.

8.5 The time of payment shall be of the essence of the Contract.

8.6 The Buyer shall fully and effectively indemnify CBOL against the total expense to CBOL arising out of the Buyer's breach or breaches of these Conditions. Such expense shall include (without limitation) (i) all expenses incurred by CBOL in sourcing the Goods (ii) all court fees (iii) all amounts payable to CBOL's professional advisers (payable on an indemnity basis) in pursuing claims against the Buyer for breach or breaches of these Conditions and for enforcing any judgement/s and/or order/s (iv) all amounts payable to CBOL's insurers and/or debt recovery agents, in each case including anticipated sums payable by CBOL only after payment of any sums from the Buyer.

8.7 For the purposes of Delivery, CBOL shall be entitled to act as agent for the Buyer and for and on behalf of the Buyer as principal to enter into any contract of carriage and or insurance on behalf of the Buyer and at the Buyer's sole cost and expense as CBOL deems reasonably necessary but CBOL shall not be under any obligation or duty to do so. The Buyer shall be responsible for complying with all conditions and requirements of the carriers of the Goods.

8.8 On the happening of a "Relevant Event" CBOL shall be entitled in its sole and absolute discretion to alter its terms of payment (other than those payment terms agreed in respect of those contracts which have already been agreed with the Buyer) or to alter any credit terms which may have been granted For the purposes of this condition, a "Relevant Event" shall be defined as being:

(i) where CBOL is notified or otherwise reasonably believes that the Buyer's credit record has worsened to a level unacceptable to CBOL; or

(ii) where CBOL in its sole discretion deems the Buyer's financial position to be unacceptable; or

(iii) where CBOL's trade indemnity insurers require such alteration.

8.9 Notwithstanding the provisions of Condition 8.8, CBOL reserves the right to withdraw any credit facilities afforded to the Buyer at any time, without notice.

8.10 In the event that the trading relationship between the Buyer and CBOL is terminated for whatsoever reason then all, sums due by the Buyer shall immediately become due and payable.

## **9. RETENTION OF TITLE AND RISK**

9.1 The risk in the Goods shall pass to the Buyer on Delivery. At that moment, the Buyer shall become responsible for the care and protection of the Goods and shall take out at its own expense adequate and comprehensive all risks cover on the Goods (with a note of CBOL's interest endorsed therein until CBOL has received payment of the price in full).

9.2 Notwithstanding Delivery and the passing of risk in the Goods, title in the Goods (including full legal and beneficial ownership) shall not pass to the Buyer until CBOL has received (in cash or cleared funds) payment in full for all Goods supplied by CBOL to the Buyer under all contracts between them. Payment of the full price for the Goods shall include the amount of any interest or other sums payable under contracts between CBOL and the Buyer.

9.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as CBOL's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as CBOL's property. Until that time or until otherwise notified by CBOL in writing or until the happening of any event set out in these Conditions entitling CBOL to terminate this Contract the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to CBOL for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

9.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) CBOL shall be entitled at any time to require the Buyer to deliver up the Goods to CBOL and, if the Buyer fails to do so forthwith, to enter upon any premises or vehicles of the Buyer or any third party where the Goods are stored and repossess the Goods.

9.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for an indebtedness any of the Goods which remain the property of CBOL.

9.6 Where the Buyer uses banking facilities or factoring or an invoice discounting company which involves the selling of debtors or using debtors as security, the Buyer shall notify the bank, the factoring or invoice discounting company concerned of CBOL's interest in the Goods and specifically that title in the Goods has not passed until the invoice has been paid in full and otherwise as set out in these Conditions.

## **10. LIMITED WARRANTY**

Subject always to the Buyer complying with the provisions of these Conditions and more particularly Condition 6 & 8 above:

10.1 CBOL will (at CBOL's option) either (i) refund the price (ii) make good by repair (iii) exchange the Goods which are shown to CBOL's reasonable satisfaction to have proved defective in materials or workmanship within the manufacturer's specified warranty period. CBOL shall at its sole discretion decide whether such making good shall be effected at the offices of the Buyer or at CBOL's offices.

10.2 The warranty contained in this Condition is in lieu of all warranties whatsoever (whether expressed or implied and whether arising at common law or by statute) all of which are hereby excluded to the full extent permitted by law. CBOL does not attempt to exclude the warranty as to title implied by law.

10.3 The warranty contained in this Condition shall not apply if (i) the repair or replacement is required because of an accident, neglect, misuse, or failure to maintain the Goods on the part of the Buyer (ii) there is interference with the Goods by persons other than CBOL's engineers (iii) the Buyer uses equipment, spares or unapproved installation of software products in the Goods or the installation of any software for which the Buyer has not obtained a license if one is required to operate the software which damages the Goods or causes them to malfunction. (iv) any sum owing to CBOL by the Buyer has not been paid. All such matters shall be the entire responsibility of the Buyer for all purposes.

10.4 CBOL's warranty under this Condition for defective Goods shall only operate where CBOL is able to claim under the Manufacturers or Publishers, dead on arrival warranty or other defective goods terms and actually obtains from the Manufacturer or Publisher a refund credit in respect of the defective Goods. For example and without limitation if the Manufacturers or Publishers defective goods terms requires that Goods are to be returned direct to it or a nominated service provider CBOL cannot and shall have no obligation to accept a return of and/or grant a credit for such Goods.

## **11. LIMITATION OF CBOL'S LIABILITY**

11.1 CBOL's liability under any Contract is limited to making good defects or failures to the extent described in condition 6 above.

11.2 CBOL shall not be liable for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special indirect or consequential loss (including loss or damage suffered by the Buyer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or CBOL had been advised of the possibility of the Buyer incurring the same. In any event, CBOL's entire liability for direct loss or damage arising from damage to tangible property for which CBOL is liable shall be limited only to the net exclusive price of the relevant product or service in connection with which any claim for damage or loss is made.

11.3 CBOL does not attempt to limit liability for personal injury or death caused by its negligence or the negligence of its employees or agents. To the extent the law does not permit such liability to be excluded, CBOL does not attempt to

limit its liability for damage to the tangible property of the Buyer resulting from the negligence of CBOL or its employees or agents to the extent that CBOL is insured against such loss.

11.4 The Buyer undertakes with CBOL that it will ensure compliance so far as is reasonably practicable by its employees, agents, licensees and Buyer with any instructions given by CBOL or the Manufacturer for the purpose of insuring the Goods will be safe and without risk to health when properly used and will take any steps and precautions, having regard to the nature of the Goods as are necessary to preserve the health and safety of persons handling, using or disposing of them.

11.5 CBOL gives no undertaking that the Goods are fit for any particular purpose (including any purpose for which such Goods are commonly supplied) or is of any particular quality in respect of its appearance, finish, safety, durability or freedom from defects or otherwise. The Buyer having greater knowledge of his own requirements relies entirely on his own skill and judgement in evaluating whether the equipment is in every respect of satisfactory quality.

11.6 Nothing in these conditions shall in any way exclude or limit any liability CBOL may have for death or personal injury caused by its negligence.

## **12. PERFORMANCE DATA AND SPECIFICATIONS**

12.1 The Buyer shall not rely upon any representations as to the Goods or their fitness for any particular purpose unless CBOL specifically agrees these in writing.

12.2 Any performance figures quoted or referred to by CBOL are estimates only, based on assumed conditions in a well managed office with experienced, adequate and efficient operators and appropriate services, and proper use of satisfactory materials.

12.3 CBOL reserves the right to make any alteration to or departure from the specifications or design of the Goods ordered provided that this shall not to a material extent adversely affect the performance of the Goods or the quality of the workmanship of the materials unless such alteration to or departure from the specifications or design are required in order to make the Goods conform to any applicable safety or other statutory or regulatory requirements from time to time.

12.4 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 CBOL shall be subject to correction without any liability on the part of CBOL. All specifications, drawings and technical documents issued by CBOL either before or after conclusion of the contract are issued solely for the Buyer's use in connection with the Goods and shall not be copied, reproduced or communicated to any third party without CBOL's approval.

## **13. FORCE MAJEURE AND FRUSTRATION**

CBOL shall (1) in any event not be liable for loss or damage and (2) be entitled to cancel or rescind the Contract if the performance of its obligations under the Contract is in any way adversely affected by any cause whatsoever beyond CBOL's control including (but not limited to) the delays or default of supplies or the defaults of any sub-contractor, act of God, explosion, fire or accident, war, threat of war, sabotage, insurrection, civil disturbance, requisition, Acts, restrictions, regulations, bye-laws, prohibitions or measures of any Government or Parliamentary or Local Authority, strike, lock-out, trade disputes, flood, accident to plant or machinery, shortage of materials or labour, import or export regulations or embargoes. If due to any such event the CBOL has insufficient stocks to meet all its commitments the CBOL may apportion available stocks between its Customers at its sole discretion.

## **14. CONFIGURATION**

14.1 On agreement CBOL will provide configuration services to the customer. Configuration services will be at the price agreed at the time the order is taken or confirmed. The Buyer shall be solely responsible for the accuracy of its order, the specification of the components and their configuration and for ensuring that the configured product specified is satisfactory for the purpose for which it is required, including without limit that it has sufficient overall functionality and will support, be compatible and inter-operable with any hardware, software and middleware with which it is intended to operate.

14.2 Configuration services will have a warranty of 14 days from the date of shipment to the Buyer. CBOL's sole liability (and the Buyer's sole remedy against CBOL) in respect of any defective services for which CBOL is responsible shall be the repair by CBOL or at CBOL's sole option the replacement of the Goods on which the services have been performed. (If any alleged defect shall be attributable to defect in the Goods the provisions of clause 14

shall apply). Claims in respect of defective service must be made within 21 days of the date of Delivery of the configured Goods.

## 15. GENERAL

15.1 The Buyer shall not without the prior written consent of CBOL assign or purport to assign any of its debts or obligations owed to CBOL to any associated company of the Buyer or to any third party whatsoever.

15.2 Where CBOL has agreed to grant credit terms to the Buyer under these Conditions the Buyer undertakes to immediately notify CBOL in writing of the existence of and the identity of any associated companies under common ownership with the Buyer. This obligation is a continuing obligation such that, if at any time after credit has been granted any other company comes into common ownership with the Buyer the Buyer shall inform CBOL of this. It is agreed that the requirements under this clause are of the essence of the Contract.

15.3 CBOL may assign its rights and obligations. The Buyer may not assign its rights and obligations.

15.4 No delay or failure by CBOL in enforcing any provision shall constitute a waiver of that provision or any other provision. No waiver by CBOL of any breach of the contract shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.5 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.

15.6 CBOL's rights are cumulative and in addition to any rights available to it at common law.

15.7 These Conditions are CBOL's current Conditions of trade. CBOL maintains the right to add to or amend these Conditions. The Buyer will be responsible for satisfying themselves as to the Conditions on an ongoing basis and currently applicable to the transaction/ (s) in hand, by either viewing the CBOL website or requesting a hard copy direct from CBOL.

15.8 Nothing in these Conditions shall confer on any third party (that is, any party other than the CBOL or the Buyer) any benefit or the right to enforce any term of these Conditions and the application of the Contracts (Rights of Third Parties) Act 1999 to these Conditions is hereby excluded.

15.9 The parties agree that these Conditions shall be constructed in accordance with English law and for the exclusive benefit of CBOL that the Courts of England are to have the exclusive jurisdiction to settle any disputes which may arise in connection with these Conditions; but the Buyer agrees that CBOL shall be entitled to bring proceedings in connection with these Conditions in any other court of competent jurisdiction.

Terms and Conditions completed & accepted by - please sign and write name

in block capitals: \_\_\_\_\_

Position in Company /Business: \_\_\_\_\_

Date: \_\_\_\_\_