

## **TERMS AND CONDITIONS FOR BUSINESS CUSTOMERS**

### **1. Definitions**

- 1.1 The supplier means Ocuk Limited trading as Overclockers UK.
- 1.2 Business Customers includes all commercial users such as businesses and educational or government establishments.
- 1.3 Buyer means the business customer who buys or agrees to buy goods from the supplier.
- 1.4 Goods means any goods or service offered by the supplier from time to time.

### **2. Format of the Contract**

- 2.1 These terms of sale apply to all goods supplied by Ocuk Limited trading as Overclockers UK, whose registered office is at Unit 5 Lymedale Cross, Lower Milehouse Lane, Newcastle-under-Lyme, Staffordshire, ST5 9EN, registered in England number 03869866 (the "supplier").
- 2.2 No contract exists between the buyer and the supplier for the sale of any goods until the supplier has received and accepted the buyer's order. Acceptance of the buyer's order will be communicated by way of email at the point of dispatch of the products. Acceptance will be deemed complete and will be deemed for all purposes to have been effectively communicated to the buyer at the time the supplier sends the e-mail to you (whether or not you receive that e-mail).
- 2.3 These conditions shall apply to all contracts for the sale of goods by the supplier to the buyer to the exclusion of all other terms and conditions including any which the buyer may purport to apply under any purchase order, confirmation of order or similar document
- 2.4 No variation or addition to these conditions shall be effective unless agreed in writing by a Director of the supplier.
- 2.5 Acceptance of delivery of the goods shall be deemed conclusive evidence of the buyer's acceptance of these conditions.

### **3. Description and Price of the Goods**

- 3.1 The price shall be that on the supplier's current price list or if applicable, the price contained in the supplier's quotation.
- 3.2 The supplier reserves the right to revise prices prior to dispatch of goods to reflect any direct or indirect increase in costs. If the supplier revises the price the buyer must be informed prior to dispatch and have the option to cancel the order. If the buyer cancels the order due to price revision any money they have paid will be refunded in full.
- 3.3 All prices quoted are exclusive of VAT and charges for packing, postage and carriage plus VAT which shall be paid in addition.
- 3.4 The supplier reserves the right to charge a non-refundable deposit payable in advance for goods made to order, or goods that have to be acquired by the supplier specifically to fulfil the buyer's order.

### **4. Payment**

- 4.1 Payment for the goods and delivery charges can be made by any method shown on the Supplier's website at the time you place your order. Payment shall be due before the delivery date and time for payment shall be of the essence.
- 4.2 There will be no delivery until cleared funds are received.
- 4.3 Payments shall be made by you without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by the Supplier to you.

### **5. Credit Account Orders**

- 5.1 Business customers may apply to set up a credit account which the supplier may grant or refuse at its discretion.

5.2 Payment is due in full on the terms of credit agreed.

5.3 Time for payment shall be of the essence. If the buyer fails to make any payment on the due date then without prejudice to any other rights, the supplier may suspend or cancel deliveries of any goods due to the buyer and/or withdraw the credit account at any time and/or appropriate any payment made by the buyer (including goods supplied under any other contract) to the overdue amount at their sole discretion.

5.4 The supplier reserves the right to charge interest on overdue invoices at a rate of 8% per annum above the Bank of England base rate.

5.5 If any act or proceedings shall be commenced in which the buyer's solvency is concerned, all moneys under any transaction covered by these conditions shall become immediately due and payable.

## 6. Delivery

6.1 The goods you order will be delivered to the address you give when you place your order, except that some deliveries are not made outside the United Kingdom.

6.2 The supplier shall use its reasonable endeavours to deliver the goods to the buyer by any delivery date estimated by the supplier. For the avoidance of doubt the buyer acknowledges that such delivery date is not guaranteed or of the essence of the Contract and the supplier shall in no circumstances be liable to the buyer for any losses, damages or charges (including but not limited to Consequential Losses) incurred by the buyer due to the late delivery of the goods.

6.3 The supplier shall be entitled to make partial deliveries by instalments and these conditions shall apply to each partial delivery.

6.4 If delivery cannot be made to your address for reasons under the supplier's control the supplier will inform you as soon as possible. The buyer shall have the right to cancel the order and receive a full refund of any monies paid to the supplier.

6.5 If you deliberately fail to take delivery of the goods (otherwise than by reason of circumstances under control of the supplier) then without prejudice to any other right or remedy available to the supplier, the supplier may:

6.5.1 store the goods until actual delivery and charge you for reasonable costs (including insurance) of storage; or

6.5.2 sell the goods at the best readily obtainable price and (after deducting all reasonable storage and selling expenses) account to you for any excess over the price you agreed to pay for the goods or charge you for any shortfall below the price you agreed to pay for the goods.

6.6 Every effort will be made to deliver the goods as soon as possible after your order has been accepted. However, the supplier will not be liable for any loss or damage suffered by you through reasonable or unavoidable delay in delivery. In this case, the supplier will inform you as soon as possible.

6.7 Time for delivery shall not be of the essence. The goods may be delivered by the supplier in advance of the quoted delivery date.

6.8 Upon receipt of your order you will be asked to sign for the goods received in good condition. If you are unable to check the contents of the package at that moment in time please sign for the parcel as "UNCHECKED". Failure to do so may affect any warranty claims that you make thereafter.

6.9 The buyer shall report any damage or shortage to the supplier in writing within 2 working days of delivery. Provided prompt notice of transit damage or loss is given and provided it is proved to the supplier's satisfaction that such damage occurred in transit, the supplier will refund, repair or replace such goods free of charge to you.

## 7 Risk / Retention of Title

7.1 The goods are at your risk from the time of delivery.

7.2 Ownership of the goods shall not pass to you until the supplier has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 the goods, and

7.2.2 all other sums which are or which become due to the supplier from you on any account.

7.3 The supplier shall be entitled to recover payment for the goods notwithstanding that ownership of any of the goods has not passed from the Supplier.

7.4 If any payment due under these conditions is overdue in whole or in part, the supplier may without prejudice to any of its other rights recover and/or re-sell the goods or any of them and may enter the buyer's premises, with his permission hereby confirmed as a condition of contract, by its servants or agents to recover the goods and the buyer shall be liable for all the supplier's costs of so doing.

7.5 Until ownership of the goods has passed to you, you must:

7.5.1 store the goods (at no cost to the Supplier) separately from all your other goods and goods of any third party in such a way that they remain readily identifiable as the supplier's property;

7.5.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; maintain the goods in satisfactory condition and keep them insured on the supplier's behalf for their full price against all risks to the reasonable satisfaction of the supplier. On request you shall produce the policy of insurance to the supplier; and

7.5.3 hold the proceeds of the insurance referred to in condition 7.5.2 on trust for the supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

7.6 Your right to possession of the goods shall terminate immediately if:

7.6.1 you have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for your winding up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or

7.6.2 you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you or you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade; or

7.6.3 you encumber or in any way charge any of the goods.

## 8. Cancellation

8.1 No contract shall be cancelled nor shall any goods, which are in accordance with the contract, be returned without prior written approval of the supplier and on terms to be determined at the absolute discretion of the supplier. The buyer shall remain liable for and shall indemnify the supplier in full for any costs, damages, losses, charges and expenses incurred by the supplier as a result of any cancellation of an Order.

8.2 If the supplier agrees to accept the return of any such goods, then a returns number obtained from the supplier must be clearly shown on the returned parcels.

8.3 The goods remain at the buyer's risk in all respects until received by the supplier. The buyer will be liable for the cost of remedying any damage to the goods returned where such damage has, in the opinion of the supplier, been caused by the goods being inadequately packaged by the buyer or through the buyer's fault.

8.4 The supplier reserves the right to make a handling and restocking charge, of the higher amount of 20% of the sales price or the sum of £20, on goods which are returned if they were ordered in error or are no longer required.

8.5 The buyer shall pay the full price for any such goods unless they are returned to the supplier before the date when payment of the price is due.

## 9. Warranty

9.1 All goods supplied by the Supplier are warranted free from defects for 12 months from the date of supply (unless otherwise stated).

9.2 This warranty does not apply to any defect in the goods arising from fair wear and tear, wilful damage, accident, negligence by you or any third party, use otherwise than as recommended by the supplier, failure to follow the supplier's instructions, or any alteration or repair carried out without the supplier's approval.

9.3 If the goods supplied to you are damaged on delivery, you should notify the supplier in writing via the e-mail address or fax number shown below within 2 working days.

9.4 The refund or replacement of faulty or defective goods is subject strictly to individual manufacturer's "Dead On Arrival" ("DOA") policies.

9.5 Individual manufacturer's DOA policies may be obtained by the buyer by contacting the supplier's returns department.

9.6 The buyer must notify the supplier of a defect in the goods within the time limit provided for in the applicable manufacturer's DOA policy.

9.7 The buyer may be required to contact the manufacturer's technical department to troubleshoot and/or to obtain DOA authorisation which is to be retained by the buyer and presented to the supplier upon request.

9.8 The buyer is also required to make a note of any call/case reference numbers issued by the manufacturer to assist the supplier with return of the DOA product.

9.9 In the case where it is established that goods are faulty or defective the supplier's returns department will issue a returns number and this returns number must be clearly shown on the returned parcels. In some instances the manufacturer's warranties require the buyer to contact the repair agent directly. If this is the case, the buyer will be so informed by the supplier's returns department.

9.10 The Products will be tested on receipt. If no fault is found the goods shall be returned to the buyer at the buyer's cost.

9.11 If a fault is found and an applicable manufacturer's DOA period is exceeded, then the goods will be repaired and/or replaced under the terms of the manufacturer's warranty.

## 10. Limitation of Liability

10.1 the supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the goods.

10.2 Nothing in these conditions excludes or limits the liability of the supplier for death or personal injury caused by the Supplier's negligence or fraudulent misrepresentation.

10.3 the Supplier shall not be liable to you for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this agreement.

## 11. Data Protection

The supplier will take all reasonable precautions to keep the details of your order and payment secure but unless the supplier is negligent, the supplier will not be liable for unauthorised access to information supplied by you.

## 12. Force Majeure

The supplier will not be under any liability whatsoever in the event that the supplier is prevented or delayed from supplying or making delivery of any goods by any reason or cause beyond the supplier's control. These events include acts of God, civil commotion, riots, flood, drought, fire,

legislation or any acts by third party companies or individuals not either under contract to or employed by the supplier.

### 13. No waiver

The supplier's failure to insist upon strict performance of any provision of these conditions shall not be deemed to be a waiver of its rights or remedies in respect of any present or future default of the buyer in performance of compliance with any of these conditions.

### 14. Sub-Contracting

The supplier shall be free to sub-contract any or all of its rights and obligations under these Terms as it sees fit. The buyer will not be entitled to sub-contract all or any part of its obligations under these Terms without the prior written consent of the supplier. The supplier will not withhold such consent unreasonably.

### 15. Confidentiality

15.1 Each party agrees with the other in respect of all information of a confidential nature disclosed in the course of the supply of goods or information as to the operation of the business of the supplier and information relating to the goods and for the supplier, any information about the buyer's business ("Confidential Information"):

15.1.1 to keep the Confidential Information in strict confidence and secrecy;

15.1.2 not to use the Confidential Information save for complying with its obligations under these Terms;

15.1.3 not to disclose the Confidential Information to a Third Party; and

15.1.4 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees and others who of necessity need it in the performance of their duties as envisaged by the Order and in those circumstances to ensure that those employees and others are aware of the confidential nature of the Confidential Information; provided however that where a part of the Confidential Information is already or becomes commonly known in the trade (except through a breach of the obligations imposed under these Terms) then the foregoing obligations of confidentiality in respect of such part shall not apply or shall cease to apply (as the case may be).

15.2 This obligation of confidentiality shall survive the termination of any Order.

### 16. Non-Solicitation

16.1 The buyer will not solicit, induce to terminate employment, or otherwise entice away whether directly or indirectly through another firm or company, any employee of the supplier professionally or otherwise directly associated with the supplier during the term of the Order or for 12 months thereafter.

16.2 For the avoidance of doubt, there is no restriction on the buyer employing any person who is employed or acting for the supplier where that person responds to a bone fide public advertisement for employees.

### 17. Applicable Law

These terms of sale and the supply of the goods will be subject to English law and the English courts will have jurisdiction in respect of any dispute arising from the contract.