

FIX247 Ltd Terms & Conditions

1 General

1.1 In these Conditions:

- (a) "Buyer" means the party with whom the Seller contracts to sell the Goods;
- (b) "Conditions" means these terms and conditions of sale of the Seller;
- (c) "Contract" means any contract between the Buyer and the Seller for the supply of Goods;
- (d) "Delivery" means either
 - (i) the availability for collection of the Goods from the Seller's works (where delivery shall be deemed to be completed after loading of the Goods at the Seller's works);
 - (ii) delivery to the Buyer's works in the United Kingdom (where delivery shall be deemed to be completed after unloading of the Goods at the Buyer's works) as determined in accordance with clause 5.1; or
 - (iii) delivery F.O.B in accordance with clause 5.5
- (e) "Goods" means the goods or replacements and any service that the Seller contracts with the Buyer to supply to the Buyer or any third party;
- (f) "Seller" means FIX24 Ltd (or their successors in title);
- (g) "Supplier" means any person who supplies the Seller with Goods; and
- (h) "Price" means the price for the Goods current at the date of the Contract.

1.2 These Conditions shall apply to any Contract to the exclusion of any other terms and conditions stipulated or referred to by the Buyer, and to inconsistent terms that would otherwise be implied by law, trade custom, practice or course of dealing.

1.3 No representative or agent of the Seller has authority to agree any terms or make any representation concerning the Goods inconsistent with these Conditions unless it is confirmed in writing by a duly authorised representative of the Seller. The Buyer acknowledges that in entering into a Contract it does not rely on any representations which are not so confirmed.

1.4 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

1.5 The Buyer shall not assign the benefit of the Contract without the Seller's prior written consent.

1.6 Any general description contained in any sales literature or advertising material or samples relating to the Goods shall not form a representation or part of the Contract.

1.7 The Goods are subject to improvements and changes without notice. The Seller reserves the right to correct any clerical or typographical errors or omissions in any sales or promotional literature, quotation, price list, order, invoice or other document issued by the Seller without any liability.

1.8 The Seller reserves the right to replace Goods with products of equal quality should the Goods be unavailable for any reason without any liability.

1.9 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Orders

Quotations issued by the Seller are not offers capable of acceptance so as to make a binding contract. All orders placed with the Seller require its acceptance before a contract arises. No order submitted by the Buyer shall be accepted by the Seller unless its acceptance is confirmed in writing by the Seller or a duly authorised representative of the Seller or by telephone by a duly authorised representative of the Seller. Each accepted order shall constitute a separate Contract, which shall be made when the Seller confirms acceptance of the order and the date of this acceptance shall be the date of the Contract.

3 Quotations, prices and Packaging

3.1 Unless expressly otherwise agreed in writing by the Seller, prices shall be in accordance with the Seller's current price list, and are exclusive of VAT and any other taxes or duties which shall be payable by the Buyer in addition. All prices and quotations are valid for 30 days only, after which time they are deemed to have been withdrawn unless otherwise stated. After this date the Seller reserves the right to alter the price without prior notice to the Buyer.

3.2 Prices are inclusive of packaging and delivery charges for Contracts over £50 but otherwise are exclusive of such charges

3.3 All Prices shall be subject to revision should the Buyer vary the Contract between the date of the confirmation of the Contract and completion of the Contract.

3.4 If any contract made by the Seller to procure Goods sold to the Buyer is made with a foreign vendor and the price under such contract is varied or such contract is cancelled or materially altered by the vendor for any reason (regardless of his right to do so), then the Buyer shall at its option pay a price correspondingly varied or accept such cancellation or alteration or the Buyer may itself cancel the contract with the Seller, but the Seller shall not in any case be liable to pay any sum to the Buyer by way of damages or otherwise howsoever.

4 Payment

4.1 Payment for Goods shall be made in full in accordance with these Conditions. Unless otherwise agreed in writing between the Buyer and the Seller (such agreement in any event to be subject to satisfactory credit checks as to the Buyer's credit worthiness), invoices shall be paid by the Buyer in full in pounds sterling without any deduction, set-off or withholding (except as required by law) no later than 30 days from the date of the invoice. Where withholding is required by law, the Buyer shall pay the Seller such amount as will, after such deduction, be equal to the amount which would have been received if no deduction had been made.

4.2 The time of payment of all sums due to the Seller shall be of the essence. In the event of any delay then without prejudice to any of its other rights or remedies, the Seller shall be entitled to:

- (a) cancel the Contract and any other Contracts or suspend any further deliveries to the Buyer; and/or
- (b) appropriate any payment made by the Buyer to such of the Goods as the Seller may think fit notwithstanding any proposed appropriation by the Buyer; and/or
- (c) charge the Buyer interest at a rate of 5% per annum above the Bank of England base rate applying at the time from the date when payment becomes due from day to day compounded daily until the date of payment and shall accrue at such a rate after as well as before any judgement.

4.3 Any extension of credit allowed to the Buyer may be changed or withdrawn at any time on giving written notice to the Buyer.

4.4 The Seller shall not be obliged to deliver or transfer any Goods if, subsequently to the sale thereof, the Seller learns of circumstances which are in the reasonable opinion of the Seller likely to adversely affect the ability of the Buyer to pay for such Goods in accordance with the Contract.

5 Delivery

5.1 The Buyer shall specify whether Delivery is to be under clauses 1.1 (d)(i), (ii) or (iii) at the time it places its order for the Goods, and the Buyer shall be responsible for the cost of any failure to comply with this requirement. If the Buyer fails to specify a Delivery method in accordance with this clause 5.1 or fails to provide an appropriate Delivery address, Delivery shall default to the Buyer's invoice address.

5.2 Whilst the Seller shall use reasonable endeavours to ensure Delivery of the Goods by any date or within any period quoted, any such dates or periods quoted are approximate and the Seller shall not

be liable for any delay in delivery of the Goods. The Buyer shall not be entitled to refuse to accept partial or late delivery, or treat late delivery as breach of contract. The Seller will attempt to deliver a next day service. but the Seller shall not be liable for failure to meet next day service.

5.3 If the Seller fails to Deliver the Goods for any reason other than any cause referred to in clause 13 or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to any excess prices of the cheapest cost to the Buyer of similar replacement goods over the Prices.

5.4 The Buyer shall be responsible for the unloading of the Goods. If the Buyer fails to take Delivery of the Goods at the time stated for delivery (otherwise than by reason of any cause referred to in clause 13 or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller will be entitled to:

(a) store the Goods until actual Delivery, and charge the Buyer for reasonable costs of storage and related insurance; and/or

(b) sell the Goods at the best prices obtainable in all the circumstances, after deducting all reasonable storage and selling expenses, appropriate and credit the remaining sum against the Prices and any other damages claimable by the Seller against the Buyer,

and the Buyer shall be liable to indemnify the Seller against any costs and expenses caused by the failure of the Buyer to unload or accept Delivery of any Goods.

5.5 Unless otherwise agreed in writing all export orders will be delivered F.O.B. (as defined in Incoterms 2000) at a British port to be notified by the Seller. For the avoidance of doubt, the Seller shall be entitled and the Buyer hereby authorises it to make such contracts as it considers appropriate with any carrier of the Goods and shall not be obliged to give notice under Section 32(2) of the Sale of Goods Act 1979.

6 Risk and property

6.1 Risk of damage to or loss of Goods shall pass to the Buyer upon Delivery, or if the Buyer wrongfully fails to take Delivery of the Goods, at the time when the Seller has tendered delivery of the Goods.

6.2 Notwithstanding Delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall remain with the Seller until the Buyer has paid in full and in cleared funds all that he owes to the Seller on any account whether arising out of this or any other contract.

6.3 Until property in the Goods passes to the Buyer, the Buyer shall hold the Goods solely as the Seller's fiduciary agent and bailee, and shall keep the Goods properly stored, protected and insured and marked as the Seller's property, and separate from those of the Buyer and third parties.

6.4 The Seller shall be entitled at any time to require the Buyer to deliver up Goods which remain the property of the Seller. The Seller, its employees or agents, shall be entitled to enter upon any premises of the Buyer (or of any third party where the Goods are stored) for the purpose of removing such Goods, and new Goods manufactured with any such Goods, from the premises.

6.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller. However, if such event should occur, all money owing by the Buyer to the Seller shall without prejudice to any other right or remedy of the Seller immediately become due and payable.

6.6 The Buyer may (unless and until notified to the contrary by the Seller) resell the Goods or use or incorporate them into other goods before ownership has passed to it solely on the basis that any use, incorporation or sale shall be effected in the ordinary course of the Buyer's business, and in any such sale of the Goods the Buyer shall deal as principal when making such a sale.

7 Loss or damage

7.1 The Seller shall not accept liability for defects or shortages, discoverable on reasonable inspection or for failure to deliver unless the Buyer has notified the Seller within the earlier of seven days of receipt of Goods (or in the case of total non-delivery, notice of dispatch) or within such time as will enable the Seller to comply with the carrier's notice requirements relating to loss or damage in transit if earlier.

7.2 Where the price quoted includes Delivery, and provided the Buyer notifies the Seller within the time limits set out in clause 7.1, the Seller shall replace or repair free of charge the Goods damaged or lost in transit and this shall be the Buyer's sole and exclusive remedy for non-delivery, mis-delivery or damage to Goods in transit discoverable on reasonable inspection.

8 Return of goods

The Seller shall not be liable for or required to give credit in respect of Goods returned for whatever reason, unless:-

- (a) Prior written authority has been received from the Seller;
- (b) The Goods are returned quoting the Seller's invoice number and date the Goods on examination are found to be in the same condition in all respects as of the date of delivery.

9 Intellectual property

9.1 As between the Seller and the Buyer, all intellectual property rights arising from the design, manufacture or supply of Goods by the Seller including rights in drawings, designs, patents, equipment will remain the property of the Seller.

9.2 The Buyer undertakes:

- (a) not to cause or permit anything which may damage or endanger the intellectual property rights of the Seller or the Seller's title to such rights or to assist or to allow others to do so;
- (b) to notify the Seller of any suspected infringement of the intellectual property rights of the Seller and to take such reasonable action as the Seller may direct in relation to any such infringement or threatened infringement;
- (c) to indemnify the Seller from all liability incurred as a consequence of its misuse of the Seller's intellectual property; and
- (d) not to tamper with markings or name plates or any other indication of the source of origin of the Goods.

10 Warranties and indemnities

10.1 The Seller does not manufacture the Goods and accordingly its sole warranty is that it shall use its reasonable endeavours to pass on the benefit of any warranties relating to the Goods that are given to it by its Supplier. The Seller shall use its reasonable endeavours at the Buyer's cost and request to enforce such terms against the Supplier for the Buyer's benefit.

10.2 Except as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. For the avoidance of doubt, the Goods are not tested or sold as fit for any particular purpose or as being of a satisfactory quality. The Buyer does not rely on the Seller's skill or judgement with regard to the Goods.

10.3 The Buyer shall indemnify and keep the Seller fully and effectively indemnified on demand against any losses, costs, liabilities, claims and demands that the Seller may suffer or incur as a result of drawings, instructions or specifications supplied by the Buyer including for the avoidance of doubt any claims of breach of intellectual property rights.

10.4 The Buyer shall indemnify and keep indemnified the Seller against all actions, claims, costs,

damages, demands and expenses or other loss arising out of a defect in the Goods (including, without limitation, all liabilities incurred under the Consumer Protection Act 1987) or their application to the extent occasioned or contributed to by any act or omission of the Buyer or its servants or agents.

11 Liability

11.1 The limits of liability set out in these Conditions shall have no application in relation to consumers (which means natural persons acting for purposes which are not in the course of business). For the avoidance of doubt, these Conditions do not affect the statutory rights of such persons.

11.2 For the avoidance of doubt, nothing in these Conditions shall be construed as limiting or excluding the Seller's liability for death or injury resulting from its negligence.

11.3 The Seller does not manufacture the Goods and therefore, except for fraudulent misrepresentation, or for death and personal injury resulting from the Seller's negligence, the Seller's liability (in contract, tort (including negligence) or otherwise) to the Buyer arising out of or in connection with the Contract or the Goods supplied shall not exceed the total sum paid by the Buyer in respect of the Goods concerned.

11.4 For the avoidance of doubt, the Seller shall be under no liability in respect of:

(a) any defect arising from fair wear and tear, wilful damage, subjection to abnormal or unintended use, failure to follow any of the Seller's storage, operating and maintenance instructions, misuse, alteration or repair of the Goods without the Seller's approval, or any other negligent or wilful act or omission of the Buyer, its employees or agents or any third parties; or

(b) any warranty or guarantee given in these Conditions if the total Price for the Goods has not been received by the Seller by the date due for payment.

11.5 For the avoidance of doubt, the Seller shall not be liable for:

(a) any loss of profits, loss of contracts, damage to goodwill, increased production costs or any other costs; or

(b) any indirect or consequential loss, arising out of any breach of these Conditions by the Seller, in each case, whether or not the likelihood of such loss has been notified to the Seller.

11.6 For the further avoidance of doubt, if the Supplier validly excludes, restricts or limits his liability to the Seller in respect of the Goods (or of any loss or damage arising in connection with them) or his liability to the Seller in respect of any liability of the Seller to the Buyer, the liability of the Seller to the Buyer shall be correspondingly excluded restricted or limited. Any term, warranty or condition express or implied or statutory to the contrary is excluded. The Seller will, upon request, supply the Buyer with details of any such exclusion restriction or limitation.

11.7 In the event that the Buyer fails to pay for the goods or any part thereof to the Seller on the date of payment the Buyer shall in addition be liable to pay to the Seller all legal costs, charges and VAT incurred by the Seller for any claims or proceedings that are pursued against the Buyer for recovery of all or any part of the payment due for the goods or interest due to the Seller.

11.8 Where the Seller has incurred any liability to the Buyer whether under this agreement or otherwise and whether such liability is liquidated or unliquidated the Seller may set off the amount of such liability against any sum that would otherwise be due from the Buyer to the Seller in respect of this or any other agreement.

12 Cancellation

No Contract may be cancelled in whole or in part except with the prior written agreement of the Seller. In such event, the Buyer shall fully indemnify the Seller against all losses including loss of profit, costs (including all labour, materials and overheads), damages, charges and expenses suffered

or incurred by the Seller as a result of cancellation.

13 Force majeure

13.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of contract by reason of any delay in performing or inability to perform the contract if such delay or inability is caused by circumstances beyond Seller's reasonable control including without limitation, any delay or inability caused by any act or omission of any third party, any breakdown of machinery, war, civil disturbance, terrorism, Governmental restriction, prohibition, enactment or regulation of any kind, strike, trade disputes, lock-out, difficulty in obtaining materials, export or import prohibitions, breakdown of machinery or utilities, fire, accident or act of God.

13.2 In the event of such circumstances arising, the Seller shall be entitled to cancel or suspend the contract and/or defer delivery without incurring any liability of any nature, but without prejudice to rights accrued to the Seller in respect of deliveries already made.

13.3 If such event exceeds a period of three months, the Seller shall promptly notify the Buyer. The Buyer shall then be entitled to cancel its Contract without liability to the Seller.

14 Buyer default

14.1 The Seller may, without prejudice to any rights or remedies which it may have against the Buyer defer or cancel any further deliveries, stop any Goods in transit and treat the contract of which these Conditions form part as determined if:

- (a) the Buyer fails to make any payment when it becomes due;
- (b) the Buyer shall be in breach of any Conditions and such breach has not been remedied (if capable of remedy) within 30 days after receiving notice of such breach;
- (c) an order is made or a resolution passed for the winding up or administration of the Buyer, or if a receiver or an administrative receiver is appointed in relation to all or any of the assets of the Buyer (other than for a voluntary liquidation for the purposes of a bona fide amalgamation or reconstruction);
- (d) the Buyer does or fails to do anything which would entitle any person to apply for or for any such matter referred to in Condition (c) to occur;
- (e) the Buyer is unable to pay its debts as and when they fall due or enters into any arrangement for the benefit of, or competition with, its creditors;
- (f) the Buyer shall cease, or threaten to cease, to carry on its business or a substantial part of such business; or
- (g) the Buyer is insolvent.

15 Data protection

15.1 In order to perform this contract, the Seller may require "personal data" (as defined under the Data Protection Act 1998) in relation to employees or other personnel of the Buyer (such as names and email addresses). The Buyer must bring these Conditions to the attention of such individuals. The Seller may disclose this personal information to other parties for the purposes of performing the Contract.

15.2 The Seller may wish from time to time to send such individuals information by post, phone or email about its other products and services which it thinks may be of interest to them. If at any time such individuals do not wish to receive this information, then they should contact the Seller.

15.3 The Seller regards its databases of information (which will include the personal information) as a valuable asset. Should the Seller sell or transfer any of its business assets this may include such databases of information.

16 Miscellaneous

16.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may be notified to the other party from time to time.

16.2 No failure or delay by the Seller in exercising any of its rights under these Conditions shall be deemed to be a waiver of that right, and no waiver by the Seller of any breach of these Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.3 If it is agreed that the Goods be processed the Seller may arrange for such processing to be performed by a third party and in such case the operation shall be carried out on the Standard Terms and Conditions of the third party.

16.4 The Buyer has no authority to make, and shall not make, any warranties, representations, guarantees, indemnities or other obligations on the Seller's behalf in respect of Goods or otherwise, except to the extent, if any, expressly authorised by the Seller in advance in writing and signed by a duly authorised representative of the Seller, and the Buyer shall fully indemnify and keep indemnified the Seller on demand for any losses, costs (including, without limitation, legal costs), damages or expenses that the Seller may suffer as a result of any breach of this clause.

16.5 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 provisions in question shall not be affected.

16.6 The Seller may at any time assign, sub-contract, sub-license or otherwise deal with the whole or any part of the Contract with the Buyer without the prior written consent of the Buyer.

16.7 No term of any Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to a Contract formed incorporating these Conditions but this shall not affect any rights or remedies that are available to a third party apart from that Act.

16.8 All Contracts shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.