

UBIQUITEK LTD TERMS OF PURCHASE

1 DEFINITIONS

1.1 In this document the following words shall have the following meanings:

- (a) "Buyer" means the organisation or person who buys the Goods;
- (b) "Goods" means the articles to be supplied to the Buyer by the Seller in accordance with and subject to these terms, and does not include accessories sold with the Goods but manufactured by other companies, which, without prejudice to the generality of the foregoing, shall include generators, tracked vehicles and safety boots;
- (c) "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- (d) "Operator Manual" means the manual issued by the Seller on delivery of the Goods as updated from time to time and published on the Seller's website;
- (e) "Seller" means Ubiquitek Ltd, a company incorporated in England and Wales under number 8148525 whose principle office is at Unit 22, Riland Industrial Estate, Norris Way, Sutton Coldfield, B75 7BB; and
- (f) "Trained Operator" means the master operator or any other operator who has been trained by the Seller under clause 10 to use the Goods in accordance with the Operator Manual.

2 GENERAL

2.1 These Terms shall apply to all contracts for the sales of Goods by the Seller to the Buyer to the exclusion of all other terms referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.

2.2 Any variation to these Terms (including any special terms agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3 PRICE AND PAYMENT

3.1 The price of the Goods shall be as indicated in the sales quotation.

(a) All prices are exclusive of VAT unless otherwise stated and the Buyer will pay any and all tax duties and other government charges payable in respect of the Products in accordance with UK legislation in force at the tax point and all other taxes and duties payable in connection with the supply of the Goods to the Buyer and its export and import into any territory.

3.2 The price of the Goods includes packaging, and such packaging is non-returnable.

3.3 Unless otherwise expressly stated the price is exclusive of any delivery costs and insurance during transportation. The Buyer shall pay any invoice for the delivery costs within the period defined on the invoice and in any event before such delivery is effected.

3.4 The price of the Goods includes training for the master operator and up to two additional operators as provided in clause 10.

4 DELIVERY

- 4.1** Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer, or to another location agreed in writing between the parties. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, including a fork-lift truck to move the Goods from the delivery truck.
- 4.2** Unless otherwise agreed in writing, the Seller will organise delivery, and insurance for the transportation of the Goods.
- 4.3** Any dates quoted for delivery are approximate only, and the time for delivery is not of the essence. The Seller will not be liable for any delay in delivery of the Goods that is caused by circumstances beyond their control or the Buyer's failure to provide the Seller with adequate delivery instructions that are relevant to the supply of the Goods.
- 4.4** If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, the Seller may at its discretion and without prejudice to any other rights:
- (a) store or arrange for the storage of the Goods and will charge the Buyer for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and / or
 - (b) make arrangements for the redelivery of the Goods and will charge the Buyer for the costs of such redelivery; and/or
 - (c) after 10 working days, resell or otherwise dispose of part or all of the Goods and charge the Buyer for any shortfall below the price of the Goods.
- 4.5** Any damages, shortages, over deliveries and duplicated orders must be reported to the Seller within 10 working days of signed receipt to enable replacement or refund.

5 RISK

- 5.1** Risk in the Goods shall pass to the Buyer upon completion of delivery of the Goods. Where the Buyer arranges to collect the Goods from the Seller's premises risk will pass when the Goods are collected at the Seller's premises.

6 TITLE

- 6.1** Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods and/or any other goods or services that we have supplied to you in respect of which payment has become due.

7 TERMINATION

- 7.1** The Seller has the right to terminate the contract at any time and provide a full refund within 30 working days.
- 7.2** The Buyer has the right to terminate the contract at any time and be entitled to a full refund less any costs incurred by the Seller in fulfilling its part of the contract.
- 7.3** The Seller can terminate the contract if:
- (a) The Buyer commits a material breach of their obligations under these terms;
 - (b) The Buyer is, or becomes, or, in the Seller's reasonable opinion, is about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors;

- (c) The Buyer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with the Buyer's creditors; or
- (d) The Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, have a receiver, manager, administrator, or administrative receiver appointed in respect of its assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge holder (as defined by in para 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of its affairs or for the granting of an administrative order, or any proceedings are commenced relating to the Buyer's insolvency or possible insolvency.

8 LIMITATION OF LIABILITY

- 8.1** The Seller shall not be liable for any loss or damage suffered by the Buyer in excess of the contract price.
- 8.2** The Seller will not be liable (whether caused by its employees, agents or otherwise) in connection with the Goods for:
 - (a) any indirect, special or consequential loss, damage, costs, or expenses; and/or
 - (b) any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; and/or
 - (c) any failure to perform any of its obligations if such delay or failure is due to any cause beyond its reasonable control; and/or
 - (d) any losses caused directly or indirectly by any failure or breach by the Buyer in relation to its obligations; and/or
 - (e) any loss relating to the choice of the Goods and how they will meet the Buyer's purpose or the use by the Buyer of the Goods supplied.
- 8.3** The exclusions of liability contained within this clause will not exclude or limit the Seller's liability for death or personal injury caused by its negligence; or for any matter for which it would be illegal for the Seller to exclude or limit its liability; and for fraud or fraudulent misrepresentation.
- 8.4** The Seller shall not be held liable for any misuse of the Goods in respect of which the Buyer has been negligent in their operation or training.
- 8.5** The Seller shall not be held liable for any loss or damage suffered through the use of the Goods.

9 WARRANTY

- 9.1** The Goods purchased benefit from a warranty in relation to their quality of manufacture and fitness for purpose ("Warranty") of 12 months ("Warranty Period"). The Warranty Period begins on the date of delivery of the Goods. Sales and delivery receipts should be retained as proof of purchase. Unless proof of purchase is submitted, the Buyer will be obliged to pay for any repairs that are carried out. Proof of purchase must state the date of purchase and name of the Goods.
- 9.2** If, within the Warranty Period, the Goods are found to be defective due to improper materials or workmanship, the Seller will, without charge for labour or parts, repair or (at the discretion of the Seller) replace the Goods or its defective parts. The Buyer agrees to cover shipping costs of the Goods back to the Buyer who will reimburse the Seller should the Goods be found to be defective.

9.3 The Seller may replace defective products or parts with new or refurbished products or parts. All products and parts replaced will be retained by the Seller and become the property of the Seller.

9.4 The following faults are not covered by this warranty:

- (a) minor faults or deviations in the quality of the Goods which do not affect the Good's value or fitness for its intended purpose;
- (b) faults due to the Buyer not using the Goods in accordance with the Operator Manual including (but not limited to) operating errors, mechanical damage, use of incorrect electricity supply;
- (c) faults due to the Buyer not following the Maintenance, Servicing and Inspection Schedule outlined in the Operator Manual;
- (d) faults due to wear and tear;
- (e) any modification of the Goods effected by you or a third party, unless the Seller has given its prior written consent to the nature and extent of the modification;
- (f) faults due to force majeure; and
- (g) faults of which the Buyer was already aware at the time of purchase.

9.1 No Warranty claim will be accepted if:

- (a) the Goods are tampered with by unauthorised person; or
- (b) identification labels, serial numbers or safety labels on the Goods or its parts have been altered or removed.

9.2 Warranty claims can be enforced in any country throughout the world in which the statutory rights of the country concerned are not in conflict with our Warranty. No other warranty claims or claims over and above the rights stated in these terms will be accepted.

9.3 Since the Warranty is governed by the laws of the country in which the Goods are purchased by the Buyer, the Buyer may be entitled to statutory rights in their own countries which are not restricted by the terms of the Warranty. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply to the sale or repair of the Goods.

9.4 For the avoidance of doubt, the Buyer shall be liable for any costs incurred in relation to any work done or parts supplied in respect of Goods outside of the Warranty Period.

10 TRAINING

10.1 The price of the Goods includes training for one master operator and up to two additional operators if trained at the same time in accordance with this clause.

10.2 Training shall take place at a location and at a time to be determined by the Seller.

10.3 If the training takes place at a location other than at the Seller's principal office, then the Buyer will pay for any reasonable travel and accommodation costs to enable such training to take place.

10.4 Training is to be only provided by the Seller.

10.5 It is the Buyer's responsibility to ensure that only Trained Operators use the Goods. The Buyer will manage access to the machine using the access controls and only allow Trained Operators to use the Goods.

10.6 The Buyer is responsible for organising annual refresher training for all its Trained Operators.

10.7 The Seller will provide training for any other employees of the Buyer to become Trained Operators subject to the Buyer paying for the reasonable costs of such training including costs of travel, accommodation and a fee for the time spent in training the new operators.

11 MAINTENANCE AND SERVICING

11.1 The Buyer is responsible for the maintenance and servicing of the Goods as outlined in the Maintenance, Servicing and Inspection Schedule in the Operator Manual.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

13 FORCE MAJEURE

13.1 The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

14 RELATIONSHIP OF PARTIES

14.1 Nothing contained in these terms shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms shall be deemed to construe either of the parties as the agent of the other.

15 COMMUNICATIONS

15.1 All notices under these terms must be in writing and signed by or on behalf of the party giving notice (or a duly authorised officer of that party).

15.2 Notices will be deemed to have been duly given:

- (a) when delivered, if delivered by courier or other messenger during normal business hours of the recipient;
- (b) when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
- (c) on the fifth working day following mailing if sent by national ordinary post;
- (d) on the tenth working day following mailing if sent by airmail.

15.3 All notices to the Seller must be sent to its principal office as found on the website; or by email to contact@ubiquetek.com.

16 ASSIGNMENT AND SUB-CONTRACTING

16.1 The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

17 WAIVER

17.1 The failure by either party to enforce at any time or for any period any one or more of the Terms herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms of this Agreement.

18 SEVERABILITY

18.1 If any term or provision of these Terms is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms had been agreed with the invalid, illegal or unenforceable provision eliminated.

19 GOVERNING LAW AND JURISDICTION

19.1 This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.