

Purchase Terms and Conditions

These Purchase Terms and Conditions apply to purchase orders placed by Server Room Environments. A PDF copy of these terms and conditions of sale is available on request.

1. Interpretation

1.1 In these Conditions:

"Buyer" means	Server Room Environments Ltd (SRE) Company Number 11853396 whose head office is at St. Andrews Business Centre, Bromfield Industrial Estate, Queen's Lane, Mold, Flintshire CH7 1XB
"Conditions"	<i>means the terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions specified by the Buyer in its order or agreed in Writing between the Buyer and the Seller</i>
"Contract"	means a contract for the purchase and sale or provision of Goods and any Contract shall include the Conditions
"Documents"	includes without limitation drawings, art work, designs, specifications, plans, photographs, models, patterns, samples, data and technical information of every description whether written, in electronic form, oral or three dimensional
"Goods"	<i>means goods (including any instalment of goods or any parts for them) and/or services and work which a Seller is to supply provide or carry out or supplied provided or carried out by a Seller for the Buyer and includes the packaging of goods</i>
"Indemnified Matters"	includes without limitation all liability, actions, proceedings, claims, demands, injury, loss, (including consequential and indirect loss) damage, damages, costs and expenses whatsoever and howsoever arising
"Intellectual property rights"	means intellectual and industrial property rights of all kinds including without limitation know-how, patents, trade marks, service marks, registered design and copyright
"Seller"	means any person firm or company with whom the Buyer places an order or who sells or provides Goods to the Buyer
"Tooling"	includes without limitation blocks, dies, patterns, moulds, parts, tools, materials (for processing or otherwise), equipment and machinery
"Writing"	includes email, cable, facsimile transmission and comparable means of communication

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1.2 Any reference in the Conditions to any provision of a statute or of a statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time

1.3 The headings in these Conditions are for convenience only and shall not affect interpretation

2. **Basis of the contract**

2.1 The Conditions shall apply to any order, to any acceptance of an order and to any contract to the exclusion of any other terms or conditions. No variations or additions shall be effective unless agreed in writing by an authorised representative of the Buyer. Any terms or conditions in a Seller's quotation or otherwise sought to be imposed by a Seller and not agreed by the Buyer in writing shall have no effect. Delivery by a Seller shall of itself imply and constitute acceptance of the Conditions. The Conditions supersede all conditions previously issued by the Buyer

2.2 An order shall not be binding on the Buyer unless issued on its official order form and duly signed by its authorised representative

2.3 The Buyer has authority to make any changes to the Seller's acceptance, acknowledgement, invoice, delivery note or other documents to make them conform to the Conditions and the Contract under Condition 2.1

3. **Price**

3.1 The price of Goods shall be the price set out in the Buyer's order. The price is fixed and shall not be increased for any reason other than a change in the rate of Value Added Tax

3.2 If for any reason no price is stated in the Buyer's order the Buyer shall not be bound and the Seller may not invoice the Buyer until a price has been agreed in Writing

3.3 If the Buyer has previously agreed in writing that Goods are to be charged at the Seller's prices ruling at the date of despatch (or otherwise) the Seller shall give immediate notice in Writing of any price changes and the order (or the balance of the order) shall be subject to the Buyer's written approval of the price

3.4 If the Buyer has previously agreed price escalation provisions in writing; the Seller shall give the Buyer immediate notice of any proposed increase; the notice will include full supporting details and evidence to justify the increase and will not be effective unless and until approved by the Buyer; if the Seller at the date of order has sufficient material in stock to complete the Contract no subsequent increase in cost of materials will be taken into account; and no increase in costs after the delivery date (Condition 9.1) will be taken into account

3.5 The price includes delivery and packaging

3.6 Discount periods will be calculated from the date of receipt of invoice by the Buyer or if the Buyer returns an invoice for clarification or correction will be calculated from date of receipt of invoice approved by the Buyer

3.7 The Seller warrants that prices charged to the Buyer do not exceed prices charged by the Seller to any other customer for the same items in the same or smaller quantities and similar conditions

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4. **Payment**

- 4.1 Payment shall be made 60 days after the month of delivery or the receipt of the invoice by the Buyer (if later)
- 4.2 The Seller shall notify the Buyer immediately if the price of Goods is less than any minimum charge of the Seller and the Buyer may cancel or amend its order

5. **Warranties and Representations**

- 5.1 In addition to all statutory warranties the Seller warrants that Goods shall :-
 - 5.1.1 in all respects shall be safe and free from any defects, whether or not affecting matters of safety;
 - 5.1.2 shall comply with all statutory requirements and be such that they can be lawfully supplied or used by the Buyer including (but without limitation) supply or use without breach of any requirement to supply or use goods which conform to a general safety requirement;
 - 5.1.3 unless notified in Writing to the Buyer prior to delivery, do not comprise or contain any substance hazardous to health within the meaning of The Control of Substances Hazardous to Health Regulations 1999
 - 5.1.4 in all respects shall be of satisfactory quality and of the best design, materials and workmanship and be fit for the purpose for which they are required;
 - 5.1.5 in all respects shall correspond exactly with any samples, drawings and specifications or other descriptions
 - 5.1.6 in the case of the provision of services shall be carried out in a good and workmanlike manner and with the best care and skill and without prejudice to the generality of the foregoing that Goods will maintain the above requirements for the period specified by the Buyer in its official order or where none is stated such period as is reasonable for the Buyer to expect in all the circumstances of the case
- 5.2 The Seller further warrants that:-
 - 5.2.1 all statements and representations made or given by it or on its behalf at any time prior to the making of the Contract and whether verbally or in writing are true in all material respects and the Seller acknowledges that the Buyer has relied on the Seller for the accuracy thereof and that such statements and representations wholly or partially induced the Buyer to enter into this contract
 - 5.2.2 it has and will take all reasonable steps (including but not limited to examination, testing and the performance of appropriate research) to ensure that Goods are safe and without risk to the health of the Buyer's employees, agents, sub-contractors, customers and any other persons who work on, use, acquire or otherwise come into contact with Goods
- 5.3 Any inspection or testing of the Goods carried out by the Buyer whether before or after delivery shall not in any way diminish the Sellers obligation to ensure that the Goods comply with the terms of the Contract

6. **Standards of Quality**

- 6.1 Goods shall comply with any appropriate British Standard specification or British Code of Practice issued by the British Standards Institution current at the date of this Contract and on request the Seller shall provide written evidence of conformity with such standards

7. **Visits to Premises**

- 7.1 The Buyer shall have the right to visit any premises of the Seller or any sub-contractors of the Seller on reasonable notice to examine work on and progress of the Goods or services which are to be supplied. The Buyer may reject any Goods which in its opinion do not or will not conform to the requirements of the Contract. The Seller will supply all relevant documentation and information as is reasonably necessary for such examination to be carried out properly

8. **Property and Risk**

- 8.1 The property in Goods will pass to the Buyer free of any charge or encumbrance when Goods are unconditionally appropriated to the Contract. Without prejudice to such provision, the risk in Goods shall not pass to the Buyer until such time as Goods have been delivered and are accepted by the Buyer as being in full conformity with the Contract

9. **Delivery**

- 9.1 The delivery date (unless otherwise agreed in Writing) is the date stipulated in the Buyer's order and is of the essence of the Contract. Where no delivery date is specified, delivery is to be made within a reasonable time and the Buyer shall have the right at any time, on giving such notice as it considers reasonable in all the circumstances, to require the Seller to deliver Goods by a stated date which will then be of the essence
- 9.2 The place for delivery of Goods shall be the place specified in the Buyer's order or, if not so specified, the Buyer's premises
- 9.3 The Seller shall deliver Goods in one consignment, unless the Buyer has ordered for scheduled delivery or by installments or over a period. In these cases the Buyer may fix or vary rates of delivery by reasonable notice. No delivery shall commence without the Buyer's prior approval. The Seller shall provide a delivery note at the time of delivery quoting the Buyer's order number and detailing Goods being delivered

10. **Packaging**

- 10.1 Goods shall be securely packed and despatched in packages which are free of all charge to the Buyer and are not returnable and which the Buyer may dispose of in such manner as it may choose

11. **Acceptance**

- 11.1 The Buyer shall not be deemed to have accepted Goods until it has given written notice of acceptance whether or not payment has been made
- 11.2 Payment of or on account of the price shall not imply acceptance of Goods or admission by the Buyer of the performance by the Seller of any obligation

12. **Faulty Goods and Breach**

- 12.1 In the event of Goods in any way failing to comply with the Contract and without prejudice to any other rights which it may have, the Buyer may:-
- 12.1.1 reject Goods and/or all further installments of Goods in which event it may return Goods at the Seller's expense or require the Seller to collect them . If the Goods are not collected by the Seller within a reasonable time of rejection the Buyer may dispose of Goods as it thinks fit including sale and shall be liable to account to the Seller only for the proceeds of any such sale after deduction of all losses and costs incurred
- 12.1.2 require the Seller at the Buyer's option to repair or replace Goods as soon as is practicable. The terms of the Contract shall apply in full to Goods so repaired or replaced as though they were Goods originally supplied
- 12.2 The Seller shall indemnify the Buyer against the Indemnified Matters arising directly or indirectly by reason of any acts or omissions of the Seller or its sub-contractors or agents, any breach of the Contract by the Seller or faulty design, workmanship or materials
- 12.3 For the avoidance of doubt the fact that Goods are repaired or replaced shall not affect any liability of the Seller for supplying Goods which required such repair or replacement
- 12.4 If the Seller fails to comply with any Condition or commits any breach of Contract or fails to deliver Goods in accordance with Condition 9 the Buyer at any time thereafter and notwithstanding any lapse of time may without prejudice to any other rights or remedies (and whether or not the Buyer has accepted Goods or property in Goods has passed) do any or all of the following:-
- 12.4.1 rescind the Contract without liability
- 12.4.2 return any Goods to the Seller at the cost of the Seller
- 12.4.3 claim damages arising whether or not such damages were in the contemplation of the Seller at the time the Contract was made and notwithstanding rescission of the Contract

13. **Information**

- 13.1 The Seller shall forthwith give the Buyer all information it has as to any defect or safety hazards in Goods, their transport, handling or use or in that type of goods supplied by it of which it becomes aware or of which it ought reasonably to have become aware
- 13.2 On request the Seller shall advise the Buyer of the name and address of any person who supplied the Seller with Goods or of any component part or of the name and address of any person who has supplied them at any time before the supply to the Seller

14. **Instructions, Warnings etc.**

- 14.1 The Seller will ensure that Goods:-
- 14.1.1 are supplied with appropriate instructions in English where it is reasonable to suppose that the Goods cannot be safely used without such instructions

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14.1.2 are clearly marked and labelled as appropriate in such a way that best ensures their safe use

14.1.3 carry all appropriate hazard and danger symbols

15. **Third Party Rights**

15.1 The Seller will indemnify the Buyer against the Indemnified Matters in respect of any claim (whether settled or not) which alleges that Goods infringe any third party Intellectual property rights

16. **Documents Tooling and Information**

16.1 The property in any Documents and Tooling supplied or paid for by the Buyer and all Intellectual property rights therein shall be and remain with the Buyer

16.2 Any Documents or Tooling supplied by the Seller for the Buyer or at its request and all Intellectual property rights therein shall be the property of the Buyer and shall be deemed to have been assigned to the Buyer by the Contract where necessary or appropriate to effect transfer of title. The Seller shall at its expense take such action as may be necessary or appropriate to secure such Intellectual property rights for the Buyer or to assign them to it

16.3 The Supplier shall at all times as well after as during the performance of a Contract maintain and procure strict confidentiality as to Contracts and all matters and concerns of the Buyer and its business and affairs and any Documents, Tooling and Intellectual property rights of the Buyer and shall not disclose the same to any third party or use the same except as may be necessary for the performance of the contract only

16.4 The Seller shall at the request of the Buyer at any time immediately deliver all Documents and Tooling or other property of the Buyer (including, without limitation, goods which the Buyer has free issued to the Seller to enable the Contract) to the Buyer together with all copies thereof in its possession or control

16.5 The Seller shall keep any Documents or Tooling or other property of the Buyer (including, without limitation, goods which the Buyer has free issued to the Seller to enable the Contract) which is in the possession or under the control of the Seller safe, properly stored, in good condition and insured in their full value in the name of the Buyer

16.6 The Seller shall indemnify the Buyer against the Indemnified matters in respect of any loss or damage to the Buyer's tangible property which is at any time in the Seller's possession or control

17. **Assignment**

17.1 The Seller shall not assign or sub-contract this Contract without the consent of the Buyer in Writing

17.2 Where the Seller has sub-contracted all or part of the contract it will:-

- 17.2.1 furnish the Buyer with copies of all relevant documents
- 17.2.2 ensure that it contracts with the sub-contractor on terms which are not less favourable to the Buyer than the terms of this contract
- 17.2.3 remain responsible for the due performance of this contract
- 17.3 Upon request the Seller will assign to the Buyer all rights which it might have against any sub-contractor

18. **Performance**

- 18.1 The Buyer shall not be liable to the Seller or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Buyer's obligations in relation to the Contract if the delay or failure was due to any cause beyond the Buyer's reasonable control including, without limitation, Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Buyer or of a third party); difficulties in obtaining materials, labour, fuel, parts or machinery; power failure or breakdown in machinery
- 18.2 In any such event the Buyer may without any liability suspend or terminate the Contract. Where the Buyer elects to suspend the Contract it may without liability subsequently terminate the Contract if in its opinion the suspension has lasted or appears likely to last for more than a reasonable time

19. **Termination**

- 19.1 This clause applies:-
 - 19.1.1 if the Seller shall commit any breach of this or any other contract with the Buyer including (without limitation) any failure to make any payments on the due dates;
 - 19.1.2 if being an individual the Seller shall die;
 - 19.1.3 if a meeting of the shareholders of the Seller (being a company) is convened for the purpose of considering a resolution for the winding up of the Seller or a meeting of the creditors of the Seller is convened or the Seller goes into liquidation or there is a winding up petition or if circumstances exist in which the Seller may be wound up by the Court;
 - 19.1.4 if the Seller does or fails to do anything which could entitle any person (including without limitation any debenture holder or secured creditor) to initiate or which could give rise to a relevant event; or if any step is taken (including without limitation a resolution being passed, a meeting being called, a petition being presented or any order being made) for or towards a relevant event; or if any relevant event shall occur: and in this condition a "relevant event" means a voluntary arrangement (as defined by Ss1 and 253(1) Insolvency Act 1986), any scheme, arrangement or composition with or any assignment for the benefit of all or any creditors of the Seller; bankruptcy of the Seller (being an individual) or of any member of the Seller (being an unincorporated firm or a partnership); the levying, threat or enforcement of any distress, execution or other legal process upon or sued against or any other exercise of rights over or

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against any assets, property or undertaking of the Seller; the taking possession by an encumbrancer of any asset, property or undertaking of the Seller; the appointment of a receiver or manager or an administrative receiver, liquidator or other similar official or insolvency practitioner in respect of the Seller or any assets, property or undertaking of the Seller; the appointment of an administrator or similar official or the making of an administration order of or in respect of the Seller; and any similar or analogous event;

19.1.5 if the Seller becomes insolvent or unable to pay its debts (within the meaning of S123 or S268 Insolvency Act 1986) or permits any judgment against it to remain unsatisfied for 14 days;

19.1.6 if the Seller ceases or threatens to cease to carry on business;

19.1.7 if any event occurs in relation to the Seller under the laws of any other jurisdiction which is similar to or analogous with any of the events described above; or

19.1.8 if the Buyer reasonably considers that any of the events mentioned above is about to occur and notifies the Seller accordingly

19.2 If this clause applies the Buyer may without prejudice to its other rights cancel the Contract or suspend any further deliveries under the Contract without any liability

20. **Insurance**

20.1 The Seller shall at all times maintain insurance with reputable insurers against all damage and/or injury to persons or property caused or contributed to by the negligence of the Seller or persons for whom it is responsible or by any defect in Goods or breach of any of the terms of the Contract in a sum not less than £5,000,000 in respect of each occurrence

20.2 The Seller shall produce to the Buyer on demand such policy of insurance and receipt for payment of the current premium

21. **General**

21.1.1 Any notice hereunder may be sent by post, facsimile or email or delivered to the Buyer at its registered office or to the Seller at any address which it may have used in correspondence with the Buyer or (if the Seller is a company) at its registered office or may be served personally on any director or the secretary of the Seller

21.1.2 A notice by first class post shall be deemed served on the second day after posting

21.1.3 A notice by facsimile shall be deemed served at the time of sending where there is an "OK" confirmation of the transmission

21.1.4 A notice by e-mail must be confirmed by fax or first class post within 24 hours after transmission

21.2 No indulgence, forbearance or delay by the Buyer or delay permitted by the Buyer shall constitute any bar to enforcement of its rights at any time and no waiver by the Buyer of any breach shall operate as a waiver of any other or subsequent breach

21.3 These conditions are considered to be reasonable in the circumstances and the trade. Any avoidance or restriction or limitation upon them or their effect by statute shall be limited to the condition or the part of the condition and the issue to which it specifically relates and

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applies. If any condition or part of a condition or limitation of liability is found to be invalid and would be valid if modified by extension of time or otherwise it shall at the option of the Buyer take effect with such modification or amendment as may be necessary to make it valid and effective. If the Buyer at its discretion decides that the effect of any such avoidance restriction or limitation is to defeat the original intention of the parties the Buyer may without liability terminate the contract

- 21.4 The contract between the Buyer and the Seller shall be deemed to have been made in England and shall be governed in all respects by English law. The Seller shall submit to the jurisdiction of the English courts Provided that the Buyer at its option may bring any legal proceedings against the Seller in the courts of any other country