

## TERMS & CONDITIONS & EQUIPMENT SALES AGREEMENT

**THIS AGREEMENT** is made on the INSERT DAY day of INSERT MONTH INSERT YEAR

**BETWEEN**

**NON ENTRY SYSTEMS LIMITED**, a company incorporated in England & Wales under company number 03052061, whose registered office is at Dragon House, Bruce Road, Fforestfach Industrial Estate, Swansea, SA5 4HS, hereinafter referred to as “the Seller”

**AND**

INSERT NAME, a company incorporated INSERT PLACE company number INSERT NUMBER, whose registered office is INSERT ADDRESS, hereinafter referred to as “the Buyer”

**IT IS AGREED AS FOLLOWS:**

**1. Object of the Agreement**

- a. The purpose of this Agreement is to define the conditions under which the Seller shall agree to sell to the Buyer the equipment listed in Appendix 1 – Equipment Details, hereinafter referred to as “the Goods”.

**2. Definitions and Interpretations**

- a. In these Conditions:

<b>"Business Day"</b>	means any day other than a Saturday, Sunday or bank holiday in England & Wales;
<b>"Buyer"</b>	means the person who accepts a quotation or offer of the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller;
<b>"Conditions"</b>	means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
<b>"Contract"</b>	means the contract for the purchase and sale of the Goods under these Conditions;
<b>"Delivery Date"</b>	means the date on which the Goods are to be delivered as stipulated in the Buyer's order and accepted by the Seller;
<b>"Goods"</b>	means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;
<b>"Month"</b>	means a calendar month;
<b>"Seller"</b>	means Non Entry Systems Limited;
<b>"Writing"</b>	means any communication effected by facsimile transmission or any comparable means.

- b. Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- c. The headings in these Conditions are for convenience only and shall not affect their interpretation.
- c. **Application of Conditions**
  - a. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation or offer of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- d. **Incoterms**
  - a. In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
  - a. The Seller's employees or agents are not authorised to make any representations or claims concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
  - b. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
  - c. Sales literature, price lists and other documents issued by the Seller in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods that are capable of acceptance. An order placed by the Buyer may not be withdrawn cancelled or altered prior to acceptance by the Seller. No contract for the sale of Goods shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an offer to sell the Goods; or has accepted an order placed by the Buyer, by whichever is the earlier of:-
- d. **Basis of Sale**
  - i. the Seller's written acceptance;
  - ii. delivery of the Goods; or
  - iii. the Seller's invoice.
- d. Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- e. **Orders and Specifications**

- a. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by an authorised representative of the Seller.
  - b. The specification for the Goods shall be those set out in the Seller's sales documentation unless varied expressly in the Buyer's order (if accepted by the Seller). The Goods will only be supplied in the minimum units (or multiples) stated in the Seller's price list or in multiples of the sales order as specified. Orders received for quantities other than these will be adjusted accordingly. Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Seller are intended as a guide only and the contents shall not be binding on the Seller.
  - c. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
  - d. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 the Seller as a result of cancellation.
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- a. The price of the Goods shall be the price listed in the Seller's published price list current at the date of acceptance of the Buyer's order or such other price as may be agreed in writing by the Seller and the Buyer.
  - b. Where the Seller has quoted a price for the Goods other than in accordance with the Seller's published price list the price quoted shall be valid for 30 Days only or such other time as the Seller may specify.
  - c. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation or alteration of duties, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
  - d. The Buyer undertakes not to offer the goods for resale in any country (not being member states of the European Community or EFTA) notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.
  - e. The price is exclusive of any applicable value added tax, excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller.
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- a. Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer as follows:
  - b. **Price of the Goods**
  - c. **Terms of Payment**
  - d. 30% Deposit upon placing order;
    - i. 70% Balance prior to shipping;

- b. Invoices are based on the quantity and condition of goods and at weights established by the Seller when the Goods leave the Seller's factory or warehouse.
- c. The Buyer shall make payment on receipt of each invoice. Receipts for payment will be issued only upon request.
- d. All payments shall be made to the Seller in the currency of the price stated in the Contract at its office as indicated on the form of acceptance or invoice issued by the Seller without any deduction credit or set off whatsoever.
- e. The Seller is not obliged to accept orders from any customer or buyer who has not supplied the Seller with references satisfactory to the Seller; if at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event the Buyer shall be required to give security deposits in respect of goods already shipped and no further goods will be delivered to the Buyer other than against cash payment and notwithstanding any payment terms contained in the Contract all amounts owing to the Buyer to the Seller shall be immediately payable in cash.
- f. **Delivery**
  - a. Delivery of the Goods shall take place and risk in the Goods will pass in accordance with Incoterms, where applicable, otherwise delivery of the Goods shall be made by the Seller tendering bills or other appropriate documents of lading or by delivering the Goods to the place specified in the Buyers orders and/or the Seller's acceptance as the location to which the Goods are to be delivered by the Seller or if no place of delivery is so specified by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection. Goods despatched by post will be delivered when the Goods are accepted by the post office in the United Kingdom.
  - b. Unless otherwise agreed in writing by the Buyer and the Seller shipment and insurance of all Goods ordered FOB or FAS will be arranged by the Seller on behalf of the Buyer and all charges shall be paid by the Buyer. Shipping charges shall be invoiced as per Appendix 1 – Equipment Details.
  - c. The Seller shall endeavour to comply with the shipping instructions given by the Buyer with its order for the Goods but the Seller reserves the right to make part shipments and to ship by vessels of the Seller's choice from any port in the United Kingdom or elsewhere.
  - d. Where the Buyer is to provide a vessel for shipment the Seller shall not be responsible for any charges resulting from failure by the Buyer to give due notice of the vessel's time of arrival.
  - e. The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the Delivery Date upon giving reasonable notice to the Buyer. If the Seller delivers the Goods at any time after the Delivery Date the Seller shall have no liability in respect of such late delivery.
  - f. Where delivery of the Goods is to be made by the Seller in bulk measured by weight, the Seller reserves the right to deliver up to three per cent more or three per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
  - g. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments 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.

- h. If the Buyer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the Seller shall be entitled upon giving written notice to the Buyer to store or arrange for the storage of the Goods and then notwithstanding the provision of Clause 10.1 of these Conditions risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place and the Buyer shall pay to the Seller all costs and expenses including storage and insurance charges arising from such failure.
- i. The Seller shall not be liable for any costs incurred for whatever reason after delivery of the Goods is deemed to have taken place. Where Goods are sold inclusive of any or all of the freight, handling, port or insurance charges, any increases in, or in the rates for, such charges arising after the date of the Contract and before the Goods are delivered or arising through deviation to a new port or airport necessarily or at the Buyer's request or through any delay however caused shall be for the Buyer's account subject to the absolute discretion of the Seller. Port surcharges and other incidental charges are not included in the freight rate will be for the Buyer's account.
- j. Import or customs duty or other official taxes or charges arising from or necessary to enable delivery of the Goods shall be for the Buyer's account and shall be reimbursed forthwith where necessarily paid by the Seller.
- k. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in delivery or in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-
  - . act of God, explosion, flood, tempest, fire or accident;
    - i. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
    - ii. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
    - iii. import or export regulations or embargoes;
    - iv. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
    - v. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
    - vi. power failure or breakdown in machinery.
- j. **Insurance**
  - . Unless otherwise expressly agreed in writing by the Buyer and the Seller, Goods sold CIF will be insured from the time the Goods leave the warehouse or place of storage at the commencement of transit, throughout the ordinary course of transit and until:-
    - i. delivery to the Buyer's or other final warehouse or place of storage at the destination named in the Buyer's order;
    - ii. delivery to any other warehouse or place of storage whether prior to delivery at the destination named in the Buyer's order or acknowledgement or order which the Buyer may elect to use either:
      - 1. for storage other than in the ordinary course of transit; or
      - 2. for allocation or distribution;
  - a. Insurance on Goods sold CIF shall be effected by the Seller on behalf of and in the name of the Buyer and shall be for the CIF

value of the Goods plus ten per cent (or such other percentage as may have been agreed in writing between the parties) against all marine and marine war and other marine risks (or air, air war or other air risks where appropriate). All special risks involved in the carriage of the Goods shall be for the Buyer's account. Claims are payable abroad and are to be made by the Buyer on the overseas agent of the Seller's insurers.

- b. All costs arising from the insurance being affected by the Buyer's request on Goods sold other than CIF shall be for the Buyer's account.

**k. Risk and Property**

- a. Risk of damage to or loss of the Goods shall pass to the Buyer in accordance with the relevant provision of Incoterms or where Incoterms do not for any reason apply:-
  - in the case of Goods to be delivered at the Seller's premises, the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - i. in the case of Goods to be delivered otherwise than at the Seller's premises, the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

- b. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

- c. 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, but if the Buyer does so all money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

**d. Warranties and Liability**

- a. Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be of satisfactory quality. The warranty period is specified in Appendix 1 – Equipment Details.
- b. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller 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.
- c. The Seller shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to abnormal conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration of the Goods without the Seller's approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.
- d. The mixing or use of the Goods is beyond the Seller's control and accordingly all conditions and warranties, statutory or otherwise, as to fitness of the Goods for any particular purpose are expressly excluded.
- e. Subject 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.
- f. No Goods may be returned to the Seller without the prior agreement in writing of the Seller. Subject thereto any Goods returned which the Seller is satisfied were supplied

subject to defects of quality or condition which would not be apparent on inspection may be replaced free of charge or, at the Seller's sole discretion the Seller may refund or credit to the Buyer the price of the defective Goods but the Seller shall have no further liability to the Buyer.

- g. Except as expressly provided in these Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Buyer (including, without limitation, loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.
- h. The Buyer shall ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory and other regulatory requirements and that the storage and handling of the Goods by the Buyer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority and the Buyer will indemnify the Seller against any liability loss or damage which the Seller might suffer as a result of the Buyer's failure to comply with this condition.
- a. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-
- b. **Buyer's Default**
  - . cancel the order or suspend any further deliveries to the Buyer;
    - i. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
    - ii. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 2.5 per cent per month, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
    - iii. where the price is to be paid in a currency other than Sterling charge to the Buyer the reduction in the amount of pounds sterling receivable by the Seller on conversion of the proceeds by the Seller's bankers as a result of variations in the rate of exchange between the due date and the date of actual payment.
- b. This Condition applies if:-
  - . the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or
    - i. the Buyer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
    - ii. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
    - iii. the Buyer ceases, or threatens to cease, to carry on business; or

- iv. the Seller reasonably apprehends that any of the events mentioned above is about to concur in relation to the Buyer and notifies the Buyer accordingly.
- c. If Condition 13.2 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries 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.
- d. **Confidentiality, Publications and Endorsements**
  - a. The Buyer undertakes to the Seller that:-
    - . the Buyer will regard as confidential the Contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default;
      - i. the Buyer will not use or authorise or permit any other person to use any name, trade mark, house mark, emblem or symbol which the Seller is licensed to sue or which is owned by the Seller upon any premises, notepaper, visiting cards, advertisements or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor;
      - ii. the Buyer will use all reasonable endeavours to ensure compliance with this condition by its employees, servants and agents. This Condition shall survive the termination of the Contract.
  - o. **General**
    - . When placing the order the Buyer must advise the Seller in writing of any special, legal, administrative or regulatory requirements applying in the territory in which the Buyer is to import, use or sell the Goods as to composition labelling distributors or sale of the Goods and the Buyer must advise the Seller immediately of any change made in such requirements.
      - a. 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.
      - b. The Buyer may not assign the benefit of the Contract without the written consent of the Seller.
      - c. 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 at the relevant time have been notified pursuant to this provision to the party giving the notice.
      - d. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
      - e. 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 thereby.

- f. The Seller reserves the right to cancel the contract at any stage prior to delivery to the buyer if the Seller feels that the buyer may not be competent to use the equipment correctly. Or that the Seller feels the buyer may use the equipment incorrectly and in such a way that it could prove dangerous. Or the Seller could use the equipment incorrectly and that equipment manufacturer (The Seller) reputation may be harmed.

p. **Applicable Law and Jurisdiction**

- a. The Contract shall be governed by the laws of England & Wales.

The Uniform Laws on the International Sale of Goods laid down in the 1980 United Nations Convention shall not apply unless expressly agreed between the parties in writing.

Signed on behalf of NON ENTRY SYSTEMS LIMITED by its duly authorised representative

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