

# Focal-Point Technology Ltd – Standard Conditions of Sale 2014

## 1. GENERAL

- (i) These Conditions shall govern all transactions into which FOCAL-POINT TECHNOLOGY LTD, whose registered office is at 2 Westbrook Court, Sharrow Vale Road, South Yorkshire, S11 8YZ enters with its Customers.
- (ii) In these Conditions:

'Customer' shall mean the other party to any quotation, offer, order or contract with or by FOCAL-POINT TECHNOLOGY LTD;

'Goods' shall mean the manufacture or sale of services performed by FOCAL-POINT TECHNOLOGY LTD;

'Invoice' shall mean the document dispatched to the Customer requiring payment and containing specifically or by inference these Conditions;

'Proforma Invoice' shall mean an Invoice sent by FOCAL-POINT TECHNOLOGY LTD to the Customer requiring payment to FOCAL-POINT TECHNOLOGY LTD before dispatch of the Goods;

'Order' shall mean the Goods requested by the Customer either by electronic mail or by post on the Customer's official Order form or company letterhead;

'Delivery Note' shall mean the document accompanying the Goods in their dispatch and delivery from FOCAL-POINT TECHNOLOGY LTD, to the Customer either by FOCAL-POINT TECHNOLOGY LTD vehicle, post or carrier and on which the Customer signs for receipt

of Goods on delivery to him and which is then returned to FOCAL-POINT TECHNOLOGY LTD;

'Advice Note' shall mean the document accompanying the Goods in their dispatch and delivery from FOCAL-POINT TECHNOLOGY LTD to the Customer either by FOCAL-POINT TECHNOLOGY LTD vehicle, post or carrier, and on which FOCAL-POINT TECHNOLOGY LTD lists the Goods dispatched against the Customer's Order;

'FOCAL-POINT TECHNOLOGY LTD Proprietary Product' shall mean products bearing the FOCAL-POINT TECHNOLOGY LTD trade mark and products manufactured by or on behalf of FOCAL-POINT TECHNOLOGY LTD for the Customer and bearing the Customer's trade mark or brand name.

- (iii) No conditions or stipulations in or attached to any form of Order submitted by the Customer, or otherwise sought to be imposed by the Customer, and which are inconsistent with these Conditions or which purport to add to or modify them in any way shall have any effect.

(iv) No previous dealings or course of conduct between FOCAL-POINT TECHNOLOGY LTD and any Customer shall vary or replace or prevail over these Conditions in any circumstances.

(v) No waiver by FOCAL-POINT TECHNOLOGY LTD of any breach of contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

(vi) Any notice required or permitted to be given by either party to the other 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 be notified pursuant to this provision to the party giving notice.

(vii) 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.

(viii) Nothing in these conditions or in the terms and conditions of any contract entered into by FOCAL-POINT TECHNOLOGY LTD with any of its Customers shall confer or purport to confer on any third party any benefit or right (including a right to enforce any of these Conditions or any term or condition of such a contract) which would otherwise be available under the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 2. PRICES AND QUOTATIONS

(i) The prices quoted on quotations are those applicable for the goods or services defined in the quotation. Subsequently, where extra items or where increased scope of services may be required, additional charges will apply.

(ii) If work is delayed beyond the reasonable control of FOCAL-POINT TECHNOLOGY LTD, additional charges will be incurred at the current FOCAL-POINT TECHNOLOGY LTD hourly/daily rate applicable at the time. Where delays result in additional travel and subsistence costs additional charges will be made.

(iii) The prices quoted on Proforma Invoices are only valid for the period specified thereon. If no period is specified thereon then the prices quoted are valid until the end of the calendar month in which the Invoice was raised.

(iv) All prices quoted are exclusive of any applicable VAT and other taxes or levies which are imposed by any competent authority.

(v) Unless expressly stated, all prices are exclusive of packaging, transportation and insurance.

## 3. PAYMENT AND SETTLEMENT TERMS

(i) Customers who wish to open credit facilities shall apply in writing to FOCAL-POINT TECHNOLOGY LTD quoting the credit limit required and the names and addresses of three current commercial references and one Bankers reference.

(ii) FOCAL-POINT TECHNOLOGY LTD retains the right to decline any application for credit facilities without giving any reason.

(iii) Credit accounts are subject to settlement by the Customer within 30 days from the date of invoice.

(iv) If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to FOCAL-POINT TECHNOLOGY LTD, all sums owed to FOCAL-POINT TECHNOLOGY LTD by the Customer, whether on any account whatsoever or otherwise, shall immediately become due and payable in full and FOCAL-POINT TECHNOLOGY LTD shall be entitled to:

- Cancel the contract or suspend any further deliveries to the Customer;
- Appropriate any payment made by the Customer to such of the Goods (or Goods supplied under any other contract between FOCAL-POINT TECHNOLOGY LTD and the Customer) as FOCAL-POINT TECHNOLOGY LTD may think fit (notwithstanding any purported appropriation by the Customer); and
- Charge the Customer interest (both before and after any judgment) on the amount unpaid at interest at the rate of 8% per annum above the base rate of the Bank of England from time to time on the amount outstanding until you pay in full. (a part of a month being treated as a full month for the purpose of calculating interest).

(v) FOCAL-POINT TECHNOLOGY LTD will accept payment from the Customer by direct bank transfer, cash or cheque. Payments must be made in accordance with the banking details issued on the invoice.

(vi) Customers failing to provide satisfactory credit references will be required to make full settlement via a Proforma Invoice prior to the dispatch of Goods.

(vii) Where a cheque is offered by the Customer in payment for Goods, FOCAL-POINT TECHNOLOGY LTD reserves the right to delay the dispatch of the Goods pending the clearance of that cheque.

(viii) FOCAL-POINT TECHNOLOGY LTD does not give any discount for prompt or early payment of Invoices or monthly statements unless expressly detailed on quotations and/or invoices.

(ix) The Customer shall not withhold payment on account of any claim the Customer may have against FOCAL-POINT TECHNOLOGY LTD.

## 4. TITLE & RISK

(i) The Customer acknowledges that before entering into an agreement for the purchase of any Goods from FOCAL-POINT TECHNOLOGY LTD he has expressly represented and warranted that he is not insolvent and has not committed any act of bankruptcy, or being a company with limited or unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver, administrative receiver, or liquidator, to petition for winding-up of the company or exercise any other rights over or against the company's assets.

(ii) Goods, the subject of any agreement by FOCAL-POINT TECHNOLOGY LTD to sell, (which by expression means, without limitation, any Order) shall be at the risk of the Customer as soon as they leave the premises of FOCAL-POINT TECHNOLOGY LTD or that of a nominated supplier, and the Customer shall insure such Goods against loss and damage naming FOCAL-POINT TECHNOLOGY LTD as loss payee and shall produce to FOCAL-POINT TECHNOLOGY LTD evidence of such insurance on request.

(iii) Such Goods shall remain the absolute property of FOCAL-POINT TECHNOLOGY LTD as legal and equitable owner until such time as the Customer shall have paid to FOCAL-POINT TECHNOLOGY LTD the agreed price together with interest due and with the full price of any other Goods the subject of any other contract with FOCAL-POINT TECHNOLOGY LTD, and FOCAL-POINT TECHNOLOGY LTD may reclaim such Goods as soon as the payment for them becomes overdue, without having to rescind the contract with the Customer.

(iv) The Customer's right to possession of Goods for which payment in full has not been received shall cease in the event of his insolvency. FOCAL-POINT TECHNOLOGY LTD may, in such event, stop the Goods in transit after parting with possession of them or, for the purpose of recovery of its Goods, enter upon any premises where they are stored or where they are reasonably thought to be stored and may re-possess the same.

## 5. CARRIAGE AND DELIVERY

(i) FOCAL-POINT TECHNOLOGY LTD reserves the right to charge carriage on deliveries as appropriate.

(ii) Delivery dates are given in good faith by FOCAL-POINT TECHNOLOGY LTD to indicate estimated delivery times but shall not amount to any contractual obligation to deliver Goods at the times stated in any communication by and on behalf of FOCAL-POINT TECHNOLOGY LTD.

(iii) Where Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by FOCAL-POINT TECHNOLOGY LTD to deliver any one or more of the installments in accordance with these Conditions or any claim by the Customer in respect of any one of the installments shall not entitle the Customer to treat the contract as whole as repudiated.

(iv) No liability for direct or consequential loss or damage arising from delay in delivery of the Goods, including without prejudice to the generality of the foregoing any delays due to an Act of God, war, civil disturbance, strikes, lock-outs, or any act outside FOCAL-POINT TECHNOLOGY LTD's control, will be accepted.

(v) The Customer shall:

- Check all Goods delivered by or on behalf of FOCAL-POINT TECHNOLOGY LTD and sign the Delivery Note for the Goods at the time of delivery;
- Mark any discrepancies between the Goods Ordered and Goods delivered on the Delivery Note prior to signing; and
- Refuse any Goods found to be damaged and mark the Delivery Note accordingly.

(vi) Any claims over damaged Goods or discrepancies between the Goods listed on the Advice Note and the Goods delivered to the Customer must be submitted to FOCAL-POINT TECHNOLOGY LTD with full particulars of the Order, the Delivery Note, the Advice Note, and other relevant information in writing within two days of delivery, failing which FOCAL-POINT TECHNOLOGY LTD cannot accept liability. The submission of a claim within this time limit does not necessarily mean that FOCAL-POINT TECHNOLOGY LTD will accept liability in relation to such claim. A Delivery Note signed 'unexamined' is not sufficient to uphold a claim.

(vii) FOCAL-POINT TECHNOLOGY LTD shall not be liable for any loss resulting from the Customer's failure to comply with the requirements, conditions or regulations of the Post Office or an independent carrier appointed to transport the Goods.

## 6. GUARANTEES, WARRANTIES AND LIMITATION OF LIABILITY

(i) Except as otherwise provided under these Conditions, FOCAL-POINT TECHNOLOGY LTD gives no guarantee or warranty in respect of Goods supplied by FOCAL-POINT TECHNOLOGY LTD in addition to that given by the manufacturer of such Goods, and accepts no liability and gives no warranty in relation to defects in such Goods, and in particular, but without prejudice to the generality of the foregoing, FOCAL-POINT TECHNOLOGY LTD does not accept any liability in respect of fitness for purpose, quality or merchantability of such Goods, whether express or implied, statutory or otherwise.

(ii) FOCAL-POINT TECHNOLOGY LTD will within its absolute discretion, repair or replace any FOCAL-POINT TECHNOLOGY LTD Proprietary Product (or refund the purchase price thereof) which is defective in materials or workmanship at the time of delivery, provided that:

- Such defect would not have been apparent on inspection; and
- Notice has been given of such defect within 7 days of the date by which the purchaser could first reasonably have ascertained that such defects existed and within two calendar months after delivery; and
- The Customer or end-user has not dealt with the goods in such a way as to render their condition worse than when they were delivered.

(d) All defective items are returned to FOCAL-POINT TECHNOLOGY LTD or the manufacturer as directed by FOCAL-POINT TECHNOLOGY LTD carriage paid. Such items having been used correctly and appropriately and not subject to misuse.

(iii) All descriptions, weights and dimensions issued by FOCAL-POINT TECHNOLOGY LTD are approximate only and are intended only to present to prospective Customers a general description of the Goods to which they refer, and no warranties or representations are given or should be inferred therefrom.

(iv) Where services are provided at Customer locations it is the responsibility of the customer to:

- Ensure a safe working environment for Focal-Point Technology Ltd staff and its own employees.
- Identify the scope of work and convey to Focal-Point Technology Ltd staff.
- Ensure all local safety precautions have been made.
- Ensure that all appropriate measures have been taken to protect the Customers plant, operations and personnel.
- Ensure that all relevant Customer staff are aware of the work being performed by Focal-Point Technology Ltd and the potential impact on the Customers plant and systems.
- Provide safe and adequate access to all required areas of plant.
- Supply free of charge to Focal-Point Technology Ltd staff any specialist items, whether safety equipment, tools or other items required in order to complete the work that would not be classed as standard tools & equipment and which Focal-Point Technology Ltd staff would not normally require in their day to day work.
- Adequate supplies of consumables such as calibration gases, compressed air etc. are available.

(v) Focal-Point Technology Ltd shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the supply of goods and services.

(vi) Focal-Point Technology Ltd's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Order.

## 7. ORDERS

(i) FOCAL-POINT TECHNOLOGY LTD reserves the right, at any time and without explanation, to:

- Refuse to accept an Order.
- Cancel an Order.
- Suspend deliveries against an Order whether or not an account is in arrears.
- Refuse cancellation of an Order.

(e) Cancel unexecuted installments of an Order.

(ii) No variation of an Order will be recognised unless otherwise agreed by FOCAL-POINT TECHNOLOGY LTD in writing.

(iii) FOCAL-POINT TECHNOLOGY LTD retains the right to levy a handling charge, equal to 20% of the contract price, where a Customer cancels an Order.

## 8. ACCEPTANCE OF GOODS AND RETURNS

(i) The Customer shall be deemed to have accepted the Goods 5 days after delivery to the Customer.

(ii) No Goods may be returned by a Customer without FOCAL-POINT TECHNOLOGY LTD's prior consent. Goods returned for credit must be accompanied by an Advice Note quoting the number of FOCAL-POINT TECHNOLOGY LTD's Invoice against which the Goods were originally supplied, and the reason for return.

(iii) No liability can be accepted for loss of or damage to Goods returned by the Customer without FOCAL-POINT TECHNOLOGY LTD's prior consent.

(iv) If there is any discrepancy between Goods advised as returned and the actual Goods received, FOCAL-POINT TECHNOLOGY LTD will only credit the Goods actually received.

(v) All goods must be returned carriage and insurance paid by the Customer.

## 9. COPYRIGHT

The copyright and all other intellectual property rights in all articles, lists, drawings, descriptions and other information produced by FOCAL-POINT TECHNOLOGY LTD shall remain the property of FOCAL-POINT TECHNOLOGY LTD.

## 10. CONFIDENTIALITY

FOCAL-POINT TECHNOLOGY LTD and the Customer agree to keep confidential all information relating to the business, policies, accounts, activities of whatever nature, of the other, where such knowledge is received in the course of transactions between the parties. Neither party shall divulge to any third party any information whatsoever relating to the other party, save only where such information is required by an employee or agent for the purposes of carrying out the obligations under these Conditions of Sale.

## 11. FORCE MAJEURE

For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Focal-Point Technology Ltd including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party); failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, interference by civil of military authorities, national or international calamity, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, epidemic or similar events, or default of suppliers or subcontractors.

Focal-Point Technology Ltd shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

## 12. GENERAL

(i) Notices.

(a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax [or e-mail].

(b) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

(ii) Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

(iii) No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

(iv) Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

(v) This Contract contains the entire agreement and understanding of the parties relating to the subject matter of this Contract and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral.

(vi) Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Seller.

(vii) Governing law. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

(viii) Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## 13. GDPR

FOCAL-POINT TECHNOLOGY LTD is committed to protecting the rights of individuals in line with the data protection act 1998 (DPA) and the new general data protection regulation (GDPR). Queries can be directed to the Data protection Officer by e-mail at [admin@focal-point-tech.com](mailto:admin@focal-point-tech.com). Privacy Notice can be viewed at [www.focal-point-tech.com/privacy-notice](http://www.focal-point-tech.com/privacy-notice)