

Exertis Hammer Ltd Terms & Conditions

1. Definitions: The following terms when used in these Terms & Conditions have the following meaning: "Seller" means Exertis Hammer Limited, company number 2640532, of Intec 1, Intec Business Park, Wade Road, Basingstoke, Hampshire RG24 8NE; "Buyer" means any person, firm, company or other organisation who is the addressee of any Quotation; "Order" means an order of any description issued by a prospective Buyer to the Seller in respect of products to be sold or supplied by the Seller; "Products" means the products, services or other items which are the subject of any Quotation; "Quotation" means any quotation for Products, acceptance of Order or other communication that is issued by a director or other duly authorised representative of the Seller; "Contract" means an Order that is accepted by the Seller issuing a Quotation to the Buyer.

2. Order:

2.1 Prior to placing an Order and as a pre-requisite to contracting with the Seller, the Buyer shall complete the Seller's registration and screening process. The Buyer shall review and agree to be bound by these Terms & Conditions, as amended from time to time, when contracting with the Seller.

2.2 All Quotations are made, and all Orders if accepted are accepted, by the Seller subject only to these Terms & Conditions and any other terms issued by a director or other duly authorised representative of the Seller, which shall prevail notwithstanding any other terms and conditions which the Buyer might bring to the Seller's notice and/or any trade, custom, practice or course of dealing.

2.3 The placing of an Order following the provision of a quotation or other indication of price (whether verbal or in writing) and delivery shall not be binding on the Seller unless and until accepted by a director or other duly authorised representative of the Seller by way of a Quotation. The Seller reserves the right to amend the price and/or specifications of the Product, in accordance with clauses 3 and 4, prior to despatch.

2.4 The Seller reserves the right to accept or refuse Orders without ascribing any reason.

3. Products:

3.1 The Product shall materially conform to the applicable specifications in force at the date of the Contract; the Seller reserves the right to amend the specifications of the Product prior to dispatch.

3.2 Unless notified to the contrary the Seller's act of dispatching the Product will confirm the specification of the Product arising from any Order. The Seller will notify the Buyer prior to despatch of any amendments to the specification stipulated in the Quotation, at which point the Buyer will have the right to terminate the Contract at no further cost to either party.

3.3 Prior to despatch, if there is an amendment to the Product specification the Seller may confirm the amended Product specifications by email or the reissuance of the Quotation and/or Invoice which shall replace any prior Quotation and/or Invoice issued in respect of the Product specification.

4. Price:

4.1 Prices of the Product, howsoever given by the Seller, are based on the conditions stipulated on the date of the Contract; the Seller reserves the right to amend the price of the Product prior to despatch.

4.2 Unless notified to the contrary the Seller's act of despatching the Product will confirm the price of the Product arising from any Order. The Seller will notify the Buyer prior to despatch of any amendments to the price stipulated in the Quotation, at which point the Buyer will have the right to terminate the Contract at no further cost to either party.

4.3 Prior to despatch, if there is an amendment to the price the Seller may confirm the amended price by email or the reissuance of the Quotation and/or Invoice which shall replace any prior Quotation and/or Invoice issued in respect of the price.

4.4 All prices are exclusive of value added tax which shall be payable by the Buyer to the Seller at the rate ruling at the applicable tax point.

5. Delivery:

5.1 Whilst the Seller will use its reasonable endeavours to deliver the Product in accordance with the Buyer's requirements, the Seller will not be liable for any consequences of late delivery howsoever caused.

5.2 The Seller may make partial delivery of any order or deliver any order by instalments and these Terms & Conditions shall apply to each and each delivery shall be deemed to be a separate contract.

5.3 At the Buyer's request the Seller will arrange, as the Buyer's agent, any necessary transportation which shall be at the Buyer's expense.

5.4 If a Seller authorised courier is used to deliver the Product, the Seller's obligation to deliver any order shall be deemed fulfilled upon delivery at the Buyer's premises. In such circumstances the Seller shall be responsible for arranging the necessary transportation and in-transit insurance.

5.5 If a Seller authorised courier is not used to deliver the Product, the Seller's obligation to deliver any order shall be deemed fulfilled upon delivery at the Seller's premises either directly to the Buyer or to the Buyer's selected courier. In such circumstances the Buyer shall be responsible for arranging the necessary transportation and in-transit insurance.

5.6 In accordance with the Seller's return policy [returnsrequest@exertisenterprise.com], if a Buyer returns a Product the delivery costs associated with the delivery of the Product shall be borne by the Buyer except where the Product is deemed to be dead on arrival and a return authorisation number is requested from the Seller within fourteen (14) days of receipt, in which case the delivery costs will be borne by the Seller.

6. Cancellation:

6.1 The Buyer may not cancel any Contract or part of any Contract which is due for delivery within thirty (30) days, except where the Seller amends the price and/or specification of the Product prior to despatch.

6.2 In accordance with clause 6.1, the Buyer may only cancel a Contract by written notice and on the condition that the Buyer pays the Seller the cancellation charges as expressly stipulated in the Contract. The Seller reserves the right to notify the Buyer of the applicable cancellation charges on cancellation of the Contract.

7. Payment:

7.1 Payment is due in advance of delivery and upon submission by the Seller of the Invoice unless the Buyer has produced appropriate references which in the Seller's opinion are satisfactory to allow payment within thirty (30) days following delivery.

7.2 As a pre-requisite to any future deliveries being made by the Seller all payments shall be made by the relevant due date.

7.3 Failure by the Buyer to pay any Invoice by its due date shall entitle the Seller at its option: a) to charge interest at the rate of two percent (2%) per month; b) to charge the Buyer any costs incurred by the Seller in the course of collecting outstanding monies due to the Seller from the Buyer; c) suspend any warranty or other support for the Product or any other goods supplied by the Seller to the Buyer, whether or not they have been paid for; and/or d) credit any amount owed by the Seller to the Buyer against any amount owed by the Buyer to the Seller on any account whatsoever.

8. Acceptance:

8.1 Each Product will be deemed to have been accepted by the Buyer fourteen (14) days after receipt of the relevant Product by the Buyer unless the Buyer has requested a return authorisation number, in accordance with the Seller's returns policy [returnsrequest@exertisenterprise.com].

8.2 The Buyer may only request a return authorisation number from the Seller within the two (2) days following receipt of the Product in the following circumstances: (a) a delivered Product differs from the Product stipulated in the Quotation; or (b) the Product was damaged in transit but only in circumstances where the Seller's authorised courier was used to deliver the Product.

8.3 The Seller will not process a return unless the Buyer returns the Product to the Seller either personally or by courier within fourteen (14) days of issuance of a return authorisation number, the return authorisation number is clearly marked on the external packaging containing the Product and, where applicable, a failure report is included with the returned Product.

8.4 The Seller may, at its discretion, and in accordance with the Seller's returns policy charge the Buyer additional fees where the Product is not returned in accordance with the specifications stipulated in the returns policy [returnsrequest@exertisenterprise.com].

9. Warranty:

9.1 The Seller warrants that the Product shall be free from defects in material and workmanship arising under normal use and service for a period of one hundred and eighty (180) days from the date of supply (the "Warranty Period") and will use its reasonable endeavours to procure for the Buyer the benefit of any extended warranties provided to the Seller by the manufacturer of the Product, which may be in the form of a credit note accounting for the then current value of the Product and depreciation principles.

9.2 Where the Product falls outside the Warranty Period and any extended warranty period provided by the manufacturer of the Product, the Seller may charge the Buyer a repair fee, return the Product to the

Buyer unrepaid or destroy the Product.

9.3 The Seller's liability under the warranty provided in Condition 9.1 shall be limited to the repair or replacement (including, but not limited to, an alternative model or a previously repaired unit as a replacement), at the Seller's option, of any part of the Product found to be defective within the Warranty Period and notified to the Seller within fourteen (14) days of its first discovery. Subject to the Seller confirming any such defect, the Seller shall affect any necessary repair or replacement at no charge to the Buyer.

9.4 The Buyer shall be responsible for returning the Product to the Seller by courier and all delivery costs incurred by either party in sending the Product or parts of the Product to the other under the warranty shall be paid by the sending party in each case.

9.5 Upon notification of any defect, the Buyer shall request from the Seller a return authorisation number in respect of the relevant Product, in accordance with the Seller's return policy [returnsrequest@exertisenterprise.com]. Upon receipt of a return authorisation number from the Seller, the Buyer may return the defective Product together with a detailed report of the alleged defect to the Seller.

9.6 Products returned by the Buyer must be in their original packaging and in clean condition. Products returned otherwise will, at the Seller's discretion, either be refused or a further additional fee may be charged to cover any additional costs involved. Products returned for repair under warranty must be accompanied by a copy of the original invoice, or must quote the original invoice number and date of purchase.

9.7 The Seller's obligation under the warranty is contingent upon the proper use of the Product prior to their return and the Seller shall have no obligation in respect of any Product modified without the Seller's approval or which have been subjected to unusual physical or electrical stress. Repair or replacement of any Product by the Seller pursuant to the warranty shall not extend the original Warranty Period of the relevant Product or parts of the Product.

10. Exclusion of liability:

10.1 The Buyer is relying on its own skill and judgment in relation to the suitability and compatibility of the Product for its purposes and the Seller accepts no liability whatsoever for any knowledge it may possess as to any special purpose for which the Product is supplied.

10.2 Save as provided in Condition 9 above and in Section 12 of the Sale of Goods Act 1979, all conditions, warranties and liabilities whatsoever whether implied, by statute or otherwise, are hereby

expressly excluded and the Seller shall be under no liability whatsoever for any loss or damage of whatsoever kind, howsoever caused or arising, including but without being limited to any direct or indirect or consequential loss or damage, lost profits, loss of use or other economic loss, provided that nothing in these Terms & Conditions or any Contract shall be construed so as to exclude the liability of the Seller for fraud, or for negligence or wilful default of the Seller, or its employees or agents, in so far as the same results in death or personal injury.

10.3 Any liability of the Seller under these Terms & Conditions shall be capped at the price of the Products supplied to the Buyer by the Seller under the Contract.

11. Force majeure: The Seller shall not be responsible for any failure to carry out any of its duties or obligations under a Contract where such failure is caused by any event arising beyond the reasonable control of the Seller.

12. Changes: The Seller may without prior approval from or notice to the Buyer make changes to any Product which do not affect physical interchangeability or performances or are required for the purposes of safety or to meet the Product's specification.

13. Property and Risk:

13.1 Where a Seller authorised courier is used to deliver the Product, the risk in the Product shall pass to the Buyer when the Product is delivered at the Buyer's premises.

13.2 Where the Buyer either collects the Product from the Seller's premises or a Buyer selected courier collects the Product from the Seller's premises on the Buyer's instruction, the risk in the Product shall pass to the Buyer on receipt of the Product at the Seller's premises by the Buyer or the Buyer's selected courier, as applicable.

13.3 Notwithstanding delivery of and the passing of risk in the Product and notwithstanding any other provisions of these Terms & Conditions, the Seller reserves the right of disposal of each part of the Product, and the property therein shall not pass to the Buyer, until the Seller has received in cash or cleared funds payment in full for such items and all other products supplied by the Seller to the Buyer and default interest as provided for in these Terms & Conditions and all other monies on any account whatsoever owed by the Buyer to the Seller.

14. Export Regulations:

14.1 The Buyer shall be responsible for obtaining any licences, registrations, permits or approvals

necessary or advisable for the importation, promotion and sale of the Products outside the EU. The Seller shall provide reasonable assistance and support to that end.

14.2 Where the Buyer resells the Products, the Buyer shall comply with all local regulations and laws concerning the marketing and sale, and with all and any conditions binding on it in any licences, registrations, permits or approvals referred to in clause 14.1.

14.3 Any Product sold by the Seller which originates in the United States of America ("U.S.A.") is subject to the United States Department of Commerce ("U.S.D.C.") Export Administration Regulations. Such Regulations require that the prior written consent of the U.S.D.C. be obtained before any such Product is exported from the United Kingdom. The Buyer shall notify the Seller of any territory into which the Product will be imported and shall be responsible for the costs of and associated with all export control approvals and all importation authorisations required.

14.4 The Buyer agrees that with respect to the resale or other disposition of any such Product purchased from the Seller, it will comply fully with the export control laws and regulations of the U.S.A. and any applicable export control laws of the EU and the United Kingdom and any amendments of such laws and regulations.

15. Termination:

15.1 If at any time the Buyer shall commit a breach of any of its obligation under a Contract, or default in making any payment by the due date, or become insolvent or in any way unable to pay its debts as they fall due, or assign or attempt to assign a Contract, then the Seller may, if it so elects, terminate any Contract then subsisting, by giving the Buyer written notice to take immediate effect (save that the Buyer shall have ten (10) days to correct a breach (if remediable), failing which termination shall take effect at the end of the ten (10) day period). No forbearance or indulgence granted by the Seller to the Buyer shall in any way limit the rights of the Seller under these Terms & Conditions.

15.2 The Buyer shall notify the Seller (in particular, the Seller's internal audit function) immediately if it becomes aware of or has grounds for suspecting any fraudulent activity or malpractice directly or indirectly in connection with the subject-matter of a Contract. Failure to notify the Seller shall be deemed an irreparable material breach of these Terms & Conditions by the Buyer.

15.3 Without prejudice to any other remedy it may have, if the Seller has reasonable grounds for believing that the Buyer or a subcontractor of the Buyer has committed fraud or malpractice directly or indirectly in connection with the subject-matter of a Contract, the Seller may, in its absolute discretion, suspend the Seller's obligations in respect of the relevant part or all of the Contract (if relevant). The suspension will continue for so long as the Seller deems it necessary to investigate the suspected fraud or malpractice.

16. Data protection: The Seller complies with the data protection laws applicable to businesses in the United Kingdom. The Seller may use personal information provided by the Buyer to process orders and respond to queries or feedback. The Seller may also use such details to contact the Buyer about special offers, new products or forthcoming events and to better understand the Buyer's business and needs.

The Seller monitors web statistics including site usage and search engine patterns to help it develop the design and layout of its website.

17. Set –off

17.1 Seller may at any time set-off any liability of the Buyer to Seller against any liability of the Seller to Buyer, whether either liability is present or future and whether not either liability arises under these Terms and Conditions. Any exercise by the Seller of its rights under this clause shall not limit or affect any other rights or remedies available to it under these Terms and Conditions or otherwise.

17.2 All amounts due under these Terms and Conditions shall be paid by the Buyer to the Seller in full without any set-off, counterclaim, deduction or withholding.

18 Assignment, Variation and Third Party Rights:

18.1 The Seller may assign all or any of its rights under these Terms & Conditions on giving written notice to the Buyer.

18.2 The Seller reserves the right, at its sole discretion, to modify or replace these Terms and Conditions from time to time and for any reason whatsoever. The Seller will not notify the Buyer of changes to these Terms and Conditions but will update all documentation with the amended Terms and Conditions. It is the Buyer's responsibility to regularly review the Terms and Conditions and any amendments or updates to the Terms and Conditions prior to entering into a Contract with the Seller.

18.3 The parties do not intend any third party to have the right to enforce any provisions of these Terms & Conditions under the Contracts (Rights of Third Parties) Act 1999 or otherwise, except where such third party is an assignee of rights under a Contract in accordance with Condition 18.1.

19. Anti-Bribery and anti-corruption

19.1 The Buyer shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010 ("Relevant Requirements").

19.2 The Buyer shall have and maintain its own policies and procedures to ensure compliance with the

Relevant Requirements and will enforce them where appropriate.

19.3 Breach of this clause 19 shall be deemed a material breach of the agreement.

20. Law: These Terms and Conditions shall be subject to and construed under English Law and the parties hereby submit to the exclusive jurisdiction of the English courts for that purpose. If any provision is declared void or unenforceable by a court

of competent jurisdiction with respect to particular circumstances, such provision shall remain in force and effect in all other circumstances. If any provision is declared void and unenforceable by a court of competent jurisdiction all other provisions in these Terms & Conditions shall remain in full force and effect.

21. Restrictions

21.1 Critical Applications. The products are not authorized (a) for use as critical components in life support devices or systems or (b) for use in other critical applications without the express written approval of the seller. Life support devices or systems are those which are intended to support or sustain life and whose failure to perform can reasonably be expected to result in an injury to the user. Critical components are those components whose failure to perform can reasonably be expected to cause failure of a life support device or system or affect its safety or effectiveness. Critical applications are those applications in which failure of the product could result, directly or indirectly in death, personal injury or severe property or environmental damage. Should buyer purchase, use, or sell any products for any such critical application or as critical components in any life support devices or systems, buyer shall indemnify and hold harmless the seller and its subsidiaries, subcontractors, and affiliates and the directors, officers, and employees of each against all claims, costs, damages, and expenses and reasonable attorneys' fees arising out of, directly or indirectly, any claim of product liability, personal injury, or death arising in any way out of such critical application, whether or not seller or its subsidiaries, subcontractors, or affiliates were negligent in the design, manufacture, or warning of the product.

21.2 Automotive Applications Indemnity And Obligation to Notify. Products are not designed or intended for use in automotive applications unless specifically designated by seller. Buyer shall assume the sole risk and liability for and shall indemnify and hold seller harmless against all claims, costs, damages, and expenses and reasonable attorneys' fees arising out of, directly or indirectly, any claim of product liability, personal injury, death, or property damage resulting directly or indirectly from any use of non-automotive-grade products in automotive applications. Buyer shall ensure that the terms and conditions of sale between buyer and any customer of buyer (1) state that products are not designed or intended for use in automotive applications unless specifically designated by seller and (2) require such customer of buyer to indemnify and hold seller harmless against all claims, costs, damages, and

expenses and reasonable attorneys' fees arising out of, directly or indirectly, any claim of product liability, personal injury resulting directly or indirectly from any use of non-automotive-grade products in automotive applications.