

TERMS AND CONDITIONS OF SALE

Definitions

- 1.1 "Company" means Elite Mobile Limited (Company No. 02987598) whose registered address is Wembley Stadium Industrial Estate, First Way, Wembley, Middlesex, HA9 0TU or its current address from time to time as notified to the Customer;
- 1.2 "Contract" means the contract for the sale of the Products by the Company to the Customer pursuant to these Terms and Conditions;
- 1.3 "Customer" means the legal person to whom the Company sells or provides the Products;
- 1.4 "Business Day" means a day other than a Saturday, Sunday or bank or public holiday in England;
- 1.5 "Business Registration Form" means the registration form completed by the Customer and, where appropriate, attached to these Terms and Conditions;
- 1.6 "Force Majeure Event" means an event or sequence of events beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, unilateral alterations of terms by network providers/suppliers, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, pandemic or epidemic, default of suppliers or subcontractors;
- 1.7 "Products" means all or any goods or services supplied by the Company to the Customer pursuant to the Contract;
- 1.8 "Order" means any order proposal or tender submitted by the Customer to the Company for the purchase of the Products; and
- 1.9 "Writing" means communication by post, facsimile transmission and e-mail but shall exclude text messages.

General

2. All Orders are subject to these Terms and Conditions which apply to all sales of Products by the Company and shall apply in place of and prevail over any terms and conditions contained in the Customer's order or in correspondence or elsewhere or implied by trade, custom, practice or course of dealing unless made in Writing and signed by the Company.
3. No variation of these Terms and Conditions shall be binding unless agreed in Writing by a Director of the Company. The Company reserves the right to amend these Terms and Conditions from time to time and shall notify the Customer of any such change in Writing.
4. Any notice to be served upon the Company must be sent in Writing to the address stated in Clause 1.1. Any notice to be served upon the Customer must be in Writing to the address specified on the Business Registration Form or such other address provided by the Customer. Any such notice shall be deemed to have been received:
 - 4.1 if delivered by hand, the day after the notice is sent;
 - 4.2 if sent by post, two days after the date of posting;
 - 4.3 if sent by a method requiring signature upon delivery, when the delivery is signed for; or
 - 4.4 if sent by fax or email, the day after the notice is successfully transmitted.
- 4.5 Clauses 4.1 to 4.4 do not apply to notices given in legal proceedings or arbitration.

Products

5. The Company shall supply all Products to the Customer pursuant to each Contract.
 - a) Where new, Products are supplied with the benefit of (and subject to the terms of) the manufacturer's warranty (if any); b) where refurbished or where there is no manufacturer's warranty provided, the Company shall provide the Company's 90 day warranty to the Customer; c) where a replacement Product has been provided by the Company, such Product is provided with the remainder of the term of either the manufacturer's warranty of the Company's warranty as provided under the original purchase. The Company's entire liability to the Customer under the warranty provided in this clause 5 is set out in clauses 6 and 7 of these Terms and Conditions.
6. With regard to a breach under clause 5 above, the Company shall (at its discretion) repair, replace (with a new, graded (i.e., fully functioning new item which may have some minor blemishes or marks) or refurbished Product) or refund in full the price of the defective Product provided that the Customer complies with the requirements contained in the Manufacturer's Warranty and, in any event, unless contradictory to the terms of the Manufacturer's Warranty: a) the Customer notifies the Company within 10 Business Days of the delivery that some or all of the Products do not comply with the warranty provided under clause 5 above; b) the Company is provided reasonable opportunity to examine such Products compliance (which may, include accessing the Customer's premises); and c) the Customer, upon request and at the Customer's sole cost, returns said Products to the Company's place of business.
7. The Company is not liable for the Product's failure to comply with the warranty provided under clause 5 if: a) the Customer makes further use of such Product subsequent to notice being provided under clause 6 (unless approved in advance by the Company); b) the defect arises owing to the Customer failing to adhere to the Company's oral or written instruction as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; c) such defect arises due to the Company following the Customer's specifications; d) the Customer alters or repairs such Products without the written approval of the Company or the Manufacturer; e) such defect arises due to fair wear and tear, rain, water or other liquid damage, accidental or wilful damage, negligence (including but not limited to failure to follow the Company's or Manufacturer's instructions whether oral or in writing) or abnormal working conditions; f) the Product's differ in specification due to changes made in order to ensure compliance with all applicable laws.

Orders & Payment

8. Each Order placed by the Customer shall be deemed to be an offer by the Customer to purchase the Products subject to these Terms and Conditions. The Contract shall be made when the Company accepts the Order in Writing or when the Company despatches the Products, whichever is earlier.

9. The Customer shall be responsible for ensuring that the Products are of the correct specification for their intended use and no representation or warranty is given by the Company in this respect.
10. The price of the Products is exclusive of Value Added Tax and shall be the price confirmed in writing by the Company at the time the Company accepts the Customer's Order, or if no price is so confirmed the Company's quoted price, or where no price has been quoted, the price listed in the Company's current price list.
11. The Company reserves the right to amend the price list from time to time and any typographical clerical or other error or omission shall be subject to correction at any time without liability on the part of the Company.
12. At any time before delivery of the Products the Company may increase the price of the Products to reflect any increase in the cost to the Company of supplying the relevant Products, the Customer will be notified in Writing and may either accept such change or cancel the order.
13. Unless otherwise agreed by the Company in Writing:
 - 13.1 the Customer's credit facility shall be as stated in the Business Registration Form;
 - 13.2 cheques will be accepted in payment for the Products up to the maximum amount of the credit facility referred to in the Business Registration Form or if payment is being made in advance; and
 - 13.3 where no credit facility has been provided to the Customer, the Customer must pay for the Products prior to despatch.
14. Where the Customer has provided bank or credit card details to the Company, the Customer agrees that any outstanding money due to the Company can be collected by the Company from the bank or credit card specified by the Customer.
15. The Company shall be entitled to invoice the Customer for the price of the Products, any applicable delivery costs and Value Added Tax at any time after despatch of the Products. Unless otherwise agreed by the Company in Writing the Customer shall pay each invoice without any set-off or other deduction in accordance with the payment terms stated in the Business Registration Form. The time for payment of the Company's invoices shall be of the essence.

Default by the Customer

16. If the Customer fails to pay any invoice by the date when payment becomes due or exceeds the maximum outstanding credit facility or breaches any other terms of the Contract, all invoices issued by the Company in respect of this Contract and any other contract which may exist between the parties shall immediately become due and any credit facility available to the Customer will immediately be withdrawn. Without prejudice to any right or remedy the Company may have, the Company shall also be entitled to:
 - 16.1 terminate the Contract and/or cancel any Order placed or suspend delivery of Products to the Customer (including products ordered pursuant to any other contract between the Customer and the Company) without any liability for loss or damage resulting from such termination or suspension;
 - 16.2 charge the Customer interest on overdue invoices (both before and after any judgment) on the amount unpaid from the date when payment became due until the date of payment at the rate from time to time applicable under the Late Payment of Commercial Debts (Interest) Act 1998, which shall also determine the method of calculation of any interest;
 - 16.3 charge the Customer a surcharge on any sum, which is overdue or in excess of the agreed credit facility and which is subsequently paid to the Company by credit card or debit card as follows:
 - 16.3.1. 2% of any sum paid by credit card (save for AMEX cards);
 - 16.3.2. 3.5% of any sum paid by AMEX card;
 - 16.3.3. £2.50 for each transaction made by debit card;
 - 16.3.4. all costs losses (including consequential losses) damages claims and expenses arising in connection with the Contract caused by any act or omission or breach of its terms on a full indemnity basis; and
 - 16.3.5. all legal and other costs and expenses incurred by the Company in recovering any unpaid sums from the Customer on a full indemnity basis.
17. The Company shall have the right to terminate the Contract or any Order placed by the Customer (without any liability for loss or damage resulting from such termination) if the Customer becomes bankrupt or insolvent or enters into liquidation or receivership or is involved in dishonest or fraudulent conduct in relation to the Contract.
18. Upon termination of the Contract, all sums owed to the Company shall become immediately due and the Company may cancel without prior notice any outstanding order or make delivery subject to payment in advance.

Delivery & Risk

19. Irrespective of delivery and the passing of risk, the Products shall remain the sole and absolute property of the Company as legal and beneficial owner until the Company has received full payment in cleared funds for the Products and all other sums payable by the Customer to the Company for which payment is then due.
20. Until title has passed to the Customer, the Customer shall hold the Products on behalf of the Company, and shall be required to store them separately and keep them safe and identifiable as the property of the Company.
21. Until such time as the title in the Products passes to the Customer, the Company shall be entitled to require the Customer to deliver up the Products to the Company and if the Customer fails to do so, to enter upon the premises of the Customer and remove the Products. If the Products have been sold in the ordinary course of business by the Customer prior to the passing of title, the Customer shall account to the Company for the proceeds of sale and shall indemnify the Company in respect of all costs, claims, expenses, losses or liability incurred in connection the recovery of the Products from the Customer or any third party.
22. The Customer shall confirm on the Business Registration Form or otherwise in Writing whether delivery of the Products is required. Where the Company is responsible for delivery, all individuals at the delivery address specified on the Business Registration Form or otherwise agreed by the parties in Writing ("Delivery Address"), shall be deemed to have authority to sign for and accept delivery of the Products.
23. Delivery shall occur when the Products are:
 - 23.1 collected from the Company's registered office;
 - 23.2 received at the Delivery Address; or
 - 23.3 as otherwise agreed between the parties in Writing.
24. The Products shall be signed for on receipt and shall be deemed to have been checked and accepted by the Customer upon such signature.

- 25 Time of delivery is not of the essence. Delivery dates and times quoted by the Company are estimates only and the Company shall not be liable for any delays in delivery or any losses suffered by the Customer as a result of any such delays. Time for delivery shall not be of the essence for the purposes of the Contract.
- 26 If the Customer fails to take delivery of the Products (otherwise than by reason of the Company's fault) and/or fails to give the Company adequate instructions for delivery and/or fails to make the Delivery Address available, then the Customer shall be charged the sum of £10 for any wasted delivery costs and additional storage costs incurred by the Company and the Customer shall not be released from its obligation to pay for the Products.
- 27 The risk for loss or damage to the Products shall pass to the Customer at the time of delivery save where:
- 27.1 the Customer fails to take delivery, in which case the Products shall remain at the risk of the Customer until the Products are returned to the premises of the Company,
- 28 the Company is not responsible for delivery of the Products, in which case risk shall pass to the Customer at the point when the Customer or a representative of the Customer collects the Products from the Company's registered office; or
- 28.1 the Company notifies the Customer otherwise in Writing.

Cancellation & Returns

29. Orders placed by the Customer and accepted by the Company cannot be cancelled or varied unless the Company consents to the cancellation or variation in Writing. Where the Company accepts the cancellation or variation of an order an administration fee of 20% of the value of the cancelled or varied order may be charged to the Customer.
30. Where the Company accepts the cancellation or variation of an order, any returns must comply with the terms contained in the Elite Swap It Service policy.
31. In the event that the Customer seeks to return any Products delivered, the Company may, at its sole discretion, offer the Customer a refund of the price of the Products, provided that:
- 31.1 the Customer notifies the Company in Writing within 3 Business Days of delivery that it seeks to return the Products;
- 31.2 the Products are returned at the Customer's cost to the Company within 14 days of delivery to the Customer; and
- 31.3 the Products are returned to the Company in the same state and condition in which they were delivered to the Customer.
32. The Company sells the products with the benefit of the manufacturer's warranty subject to the terms and conditions of any such warranty and the Company shall have no further liability to the Customer.
33. Any claim for a refund in respect of any Products shall not entitle the Customer to withhold or delay payment in respect of any other Products for which no such claim for a refund has been made whether or not those Products form part of the same Order.

Limitation of Liability & Indemnity

34. Subject to the foregoing all conditions, warranties and representations express or implied by statute, common law, custom, usage or otherwise in relation to the Products are hereby excluded to the fullest extent permitted by law.
35. The Company's aggregate liability to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall be limited to the price paid for the Products, determined by the net price invoiced to the Customer.
36. The Company shall not be liable to the Customer for:
- 36.1 direct or indirect loss of profits, anticipated profits, business interruption or for any indirect or consequential loss or damage, including but not limited to claims made against the Customer by third parties, even if such losses were reasonably foreseeable;
- 36.2 any acts or omissions of the Customer or any third parties including but not limited to any loss damage or injury direct or indirect resulting from defective material faulty workmanship or otherwise, howsoever arising; and
- 36.3 any loss or damage caused as a result of cancellation pursuant to Clauses 16 or 17.
37. Notwithstanding the foregoing, nothing in these Terms and Conditions excludes or limits the liability of the Company for any fraudulent representation or death or personal injury caused by the Company's negligence.
- 37.1 The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under these Terms and Conditions or the Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Company from performing its obligations for more than 4 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.
38. The Customer shall indemnify the Company against all costs, claims, expenses, losses or liability incurred in connection with any claim made by a third party in relation to the Products.

Miscellaneous Provisions

39. The Company reserves the right to substitute goods substantially equivalent to the Products ordered by the Customer.
40. Where Products are supplied for export from the United Kingdom the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties or other charges thereon and shall indemnify and keep the Company indemnified against all costs, claims, expenses and losses incurred or suffered or obligations which may be imposed on it by reason of the Customer's failure to comply with these obligations.
41. The Company's employees are not authorised to make representations on behalf of the Company in relation to the Products. In entering into any contract with the Company, the Customer acknowledges that it does not rely on and waives any claim for breach of any such representation which is not confirmed in Writing by a Director of the Company.
42. No failure, delay or omission by the Company in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

- 42.1 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Company shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
43. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 43.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
44. The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
45. The Customer recognises that any breach or threatened breach of the Contract may cause the Company irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
46. A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms and Conditions.
47. These Terms and Conditions and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed with, the laws of England and Wales.
48. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, these Terms and Conditions, its subject matter or formation (including non-contractual disputes or claims).
49. The Customer hereby acknowledges that any and all of the trademarks copyright patents and other intellectual property rights (including present and future intellectual property rights) used or otherwise subsisting in or in connection with the Products are and shall remain the sole property of the Company or, as appropriate, the manufacturer or developer of the Products. The Customer shall indemnify the Company against all liabilities, costs, claims, expenses or losses incurred or suffered as a result of an infringement of any such intellectual property rights.