

# Fourthtrack Systems Terms and Conditions of Sale

## 1. DEFINITIONS

- (a) FTS means Fourthtrack Systems and/or Market Vision.
- (b) Customer means a person, firm or company to whom FTS supplies Services and/or Products (as hereafter defined) and shall include the Customers legal personal representatives, successors and assigns.
- (c) Contract shall mean any agreement between FTS and the Customer for the supply of Products or Services.
- (d) Services means Services to be provided by FTS to a customer and may include but shall not be limited to installation of Products and technical advice.
- (e) Products means Products or parts thereof to be supplied but not necessarily manufactured by FTS to a Customer.
- (f) Contract price shall mean the sum so named in the Contract and is ex works exclusive of VAT and other taxes and delivery costs which are payable in addition at the rate applicable on the date of invoice.
- (g) Premises shall mean the place or places other than FTS premises to which the Product is to be delivered as described in the Contract.

## 2. CONTRACT

- (a) Any quotation submitted by FTS to a customer shall constitute an offer and shall remain open for acceptance in the manner prescribed for a period of 30 days from the quotation date.
- (b) Any Contract between FTS and the Customer shall incorporate and be subject to these general terms and conditions and any terms or conditions (if any) contained in the Customers order form or other document which are inconsistent with these general terms and conditions shall be void and of no effect.
- (c) Any representation or warranty whether written or oral made or given prior to the Contract is hereby expressly excluded and any amendment to these general terms and conditions shall not apply unless it is agreed in writing by FTS.
- (d) If any provision hereof shall be held by a court of competent jurisdiction to be invalid or voidable such provision shall be struck out and the remainder hereof shall stand in full force and effect.

## 3. LIABILITY

- (a) Subject to the specific warranty provisions herein contained FTS liability for any claims for incidental injury, loss or damage made by the Customer arising out of or in connection with any defects in the product or any act, omission, neglect or default (whether or not the same constitutes a fundamental term thereof) of FTS, its servants or agents in the performance of the Contract shall be limited to the invoiced value of the Contract.

FTS shall not in any event be liable for any consequential loss or damage howsoever caused.

## 4. CONFIDENTIALITY

FTS and the Customer shall keep confidential any information obtained under the Contract and shall not divulge the same to any third party without the consent in writing of the other party.

- (a) The property and copyright in all documents, drawings, plans, illustrations, photographs and other printed matter submitted to the Customer shall remain with FTS and none of these items shall be disclosed to a third party without FTS's written consent.
- (b) The Customer shall not acquire directly or indirectly by virtue of any Contract any industrial, intellectual or other property rights of FTS pertaining to the Products and any present or subsequently acquired industrial or intellectual property or other protected rights of FTS pertaining to the products shall become or remain the sole and exclusive property of FTS.

## 5. PAYMENT

Payment under the contract will be made to FTS either :

- in accordance with the terms and conditions set out in the quotation or
- as previously agreed by FTS in writing or
- in the absence of any other terms agreed by FTS, no more than 30 days from the date shown on the invoice.

## 6. TITLE AND RISK

- (a) Risk in the Product shall pass to the Customer on delivery to the Premises.
- (b) Property in the Product shall not pass to the Customer until the invoiced value has been paid in full. If nevertheless the Customer sells the Product or sells items into which the Product has been incorporated before the Product has been paid for in full he shall hold the proceeds of the sale in trust for FTS and FTS shall be entitled to trace the Product into such items or the proceeds of the sale.

## 7. DELIVERY AND INSTALLATION

- (a) FTS shall use its best endeavours to comply with any date or dates agreed for delivery of the Product and the provision of Services, but such date or dates shall only be statements of expectation and shall in no way be binding on FTS and accordingly time of delivery shall not be of the essence of the Contract.
- (b) The Customer shall not be entitled to delay delivery or the provision of Services under any circumstances and if the Contract does not specify any date for delivery the Customer shall accept delivery when the Product is available for delivery.

## 8. WARRANTY

FTS will make good by repair or at FTS's option by the supply of a replacement, defects which, under proper use, appear in the goods within a period of twelve calendar months after the invoice date and arise solely from faulty design (other than a design made, furnished or specified by the Customer for which FTS have disclaimed responsibility in writing), materials or workmanship: provided always that the defective Product has been returned to FTS if so required. Repaired or replacement Products shall be delivered to the Customer Premises at FTS's expense.

In the case of goods not of FTS manufacture the Customer shall only be entitled to such benefits as FTS may receive under the guarantees given to FTS in respect thereof but not so as to impose on FTS in respect of such parts or components a liability greater than that imposed on FTS by the preceding paragraph of this clause. FTS's liability under this clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the goods, and save as provided in this clause FTS shall not be under any liability whether in contract, tort or otherwise, in respect of defects in goods delivered or for any injury (other than personal injury caused by FTS's negligence as defined in Section 1 of the Unfair Contract Terms Act 1977), damage or loss resulting from such defects or from any work done in connection therewith.

## 9. TERMINATION

- (a) Either party shall have the right to terminate the Contract if the other party is in material breach of the Contract and does not rectify this breach within 30 days of receipt of notification thereof in writing.
- (b) Such termination shall in all cases be without prejudice to the existing rights and obligations of both parties.

## 10. ASSIGNMENT

The Customer shall not be entitled to assign the Contract or any part thereof.

## 11. FORCE MAJEURE

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances beyond the party's reasonable control including but not limited to trade disputes, breakdown of plant, delay by suppliers, fire, theft, riot, war, prohibition of export, or import, Act of God.

## 12. NOTICE

Any notice to be given hereunder shall be in writing and shall delivered or sent by post or facsimile to the relevant party at its registered or principal office (or such other address as shall have been notified to the other party) and shall be deemed to have been given in the case of a notice which has been delivered by hand when it is deposited at the appropriate address, in the case of a notice sent by post 48 hours after the date on which a first class registered letter including such notice is posted and in the case of a notice sent by facsimile when it is deposited and the appropriate answerback code is received.

## 13. LAW

These general terms and conditions and each and every Contract made pursuant thereto shall be construed and interpreted in accordance with the Laws of England.