

# **CONDITIONS OF SALE AND DELIVERY**

## **Exclusive Conditions:**

1. These are the exclusive General Conditions of Sale and Delivery by Ziggity Systems, Inc., (hereinafter referred to as "Ziggity") for all goods and services provided to purchaser, whether or not those purchasers are end users of the goods and services or authorized distributors of the goods and services to others. These conditions apply to all activities pertaining to those goods and services, both before and after the sale, including, without limitation, offers, order confirmations, processing, deliveries and repairs.

2. No other conditions shall be valid or binding upon Ziggity, even if Ziggity is informed of them, unless those conditions expressly refer to these General Conditions of Sale and Delivery and are expressly accepted by Ziggity in a writing such as a signed letter, email, or facsimile, and such other conditions shall only be valid with respect to the particular contract (for Ziggity goods and services) to which they relate and shall not be of general applicability between the parties.

3. Each and every party entering into a contract with Ziggity for its goods and services shall be bound by these conditions, and jointly and severally liable for full performance of the obligations resulting from such contract.

## **Offers and Prices:**

4. No offer or quotation submitted by Ziggity or a Ziggity distributor will be binding upon Ziggity unless a firm offer is submitted by Ziggity in writing. Additionally all terms and conditions as well as exclusions stated within the body of the Ziggity offer or quotation apply.

5. All offers or quotations submitted by Ziggity will be open for acceptance only for a period of 30 days from the date of the offer unless the offer explicitly states otherwise therein.

6. All prices stated in offers or quotations submitted by Ziggity will be construed as for delivery Ex Works out of Ziggity's warehouses in Middlebury, Indiana or any other facility designated by Ziggity in writing and shall not include any additional taxes, duties, freight charges or the like imposed upon the purchase. The purchaser shall be solely responsible for payment of such additional charges unless specifically stated otherwise in that offer or quotation. Unless specifically stated otherwise installation and installation labor are not included in the Ziggity offers or quotations.

7. If the time between a purchaser's placing of an order and taking delivery of the goods and services so ordered exceeds 30 calendar days and if there is in that time period any rise in Ziggity's costs associated with those goods, and services, then Ziggity shall have the right to raise its prices accordingly by giving written notice to the purchaser. Upon receipt of any such notice, purchaser shall have the right to cancel the order or contract, if it so chooses, by giving written notice of such cancellation to Ziggity within 14 days thereafter.

## **Delivery:**

8. Although Ziggity will use reasonable efforts to meet all delivery times stated by Ziggity, the parties all agree that those stated times will only be approximate delivery times unless a firm delivery time has been accepted by Ziggity in writing. Ziggity shall not be liable in any way for late delivery and purchasers shall have no right to cancel the contract on account of late delivery, except that, if delivery is late and is not caused by a Force Majeure (as defined below), purchasers shall then have the right to demand in writing that Ziggity proceed with delivery within four weeks of that demand or, if a firm delivery time was previously accepted by Ziggity, within 10

working days of that demand. If, after that demand is made, delivery is not made within the times stated, then purchasers shall have the right to cancel the contract by giving immediate written notice of cancellation to Ziggity. Purchasers shall not be entitled to damages or any other remedy on account of late delivery by Ziggity.

9. In all cases, goods shall be deemed to be delivered to purchaser:

- when the goods are actually surrendered, if the goods are collected by or on behalf of the purchaser directly from a Ziggity warehouse;
- when the goods are delivered to a common carrier, if under the contract the common carrier is to transport the goods to the purchaser and if Ziggity is not precluded by circumstances beyond its control from dispatching the goods to the common carrier; and
- when the goods are offered to the purchaser for collection at a Ziggity warehouse, in all other circumstances.

10. Purchasers have the obligations to promptly accept delivery of the goods and to cooperate in the delivery of the goods. As of the time the goods are delivered to a purchaser, those goods shall be deemed for the account of that purchaser and the purchaser shall bear the risk of loss.

11. If a purchaser improperly refuses or fails to promptly accept delivery of the goods, purchaser shall be liable for additional storage, administrative and handling costs to Ziggity. The total of these costs is agreed by the parties to amount to one percent (1%) of the invoice price of the goods per day, due and payable immediately without any prior demand or notice of default, up to a maximum of 15 days, after which time Ziggity shall have the right to dispose of the goods to mitigate in part the damages caused by purchaser. In addition, Ziggity shall have the right in such cases to require the purchaser to immediately pay the full invoice price of the goods without any prior demand or notice of default and without prejudice to any other rights and remedies of Ziggity.

## **Payment:**

12. Purchaser has at all times the obligation to maintain financial solvency sufficient to timely pay all amounts due to Ziggity under the contract. Ziggity shall have the right at all times, whether or not before delivery, to demand a sufficient guarantee of purchaser's timely fulfillment of its payment obligations. In the event such a guarantee is demanded and not timely provided, Ziggity shall have the right to cancel the contract in whole or part by sending written notice to purchaser without notice of default and without any liability by Ziggity for damages to purchaser. Payments already due and owing from purchaser are not relieved by that cancellation, and purchaser is not relieved of any damages due to Ziggity on account of its failure to provide a sufficient guarantee of payment.

13. All payments must be made by purchaser on or before the due dates stated in the invoice without any prior demand or notice of default. In the event of partial delivery of the goods to complete the order, purchaser shall make payment for each partial delivery separately.

14. In addition to any other remedies it has, Ziggity shall have the right to receive interest on account of any delayed payment by purchaser at the monthly interest rate stated in the invoice without any prior demand or notice of default. For purposes of computing the interest so due, any portion of a month shall be counted as a full month.

15. In the event that purchaser pays Ziggity by an interbank transfer, the date of payment shall be that date on which the amount owed by purchaser is credited to Ziggity's account.

16. Any payment made by purchaser to Ziggity shall be applied first to any unpaid charges, such as for collection fees, storage of delivered goods accepted late by purchaser, and the like, applied secondly to any interest due on unpaid invoices, and applied thirdly to the earliest of the invoices remaining unpaid.

17. Purchasers shall not offset any payment due to Ziggity under a contract for the provision of goods and/or services by Ziggity with any financial claims against Ziggity.

18. If purchaser does not make payments to Ziggity when due, all internal and external costs, including, without limitation, collection charges, process-servers' and attorneys' fees, both for time in court and otherwise, which are incurred by Ziggity to enforce performance of purchaser's obligations to Ziggity shall be for purchaser's account.

#### **Title to the Goods:**

19. Except as stated herein, Ziggity retains all title in and to the goods until payment for those goods has been made by purchaser in full, regardless of whether purchaser has received delivery or taken possession of the goods. Purchaser shall take no action to encumber, pledge or transfer title to the goods until payment has been made in full to Ziggity, except that purchasers taking delivery for resale in the normal course of business may sell and deliver the goods to third parties provided that the proceeds of that sale or the claim on the third party buyer by the purchasers are immediately transferred or assigned to Ziggity.

20. In the event of a breach of purchaser's obligations or cancellation of the contract, Ziggity shall have the right to take back its goods without prior demand or notice of default or intervention by a Court. For that purpose, purchaser hereby authorizes Ziggity to enter any place where the goods are being stored.

#### **Warranty and Limitation of Liabilities:**

21. Ziggity may provide a warranty to the original retail purchaser of Ziggity's goods. The terms of any such warranty will be as set forth in Ziggity's standard warranty in effect at the time of the sale of such goods and subject to any Ziggity warranty deviations or exclusions in effect at the time of the sale of such goods.

22. *Ziggity disclaims all liability for incidental and consequential damages. There is no warranty of merchantability, express or implied, and there are no warranties which extend beyond the face of Ziggity's standard warranty in effect at the time of the sale of the goods as modified by any Ziggity warranty deviations or exclusions in effect at the time of the sale of the goods.* No person, including any dealer, agent, distributor or representative of Ziggity is authorized to make any representation or warranty concerning Ziggity goods and services other than as contained Ziggity's standard warranty in effect at the time of the sale of the goods as modified by any Ziggity warranty deviations or exclusions in effect at the time of the sale of the goods. Ziggity reserves the right to change models and specifications of its goods at any time without notice or obligation.

23. In no case shall any assistance given by or on behalf of Ziggity to the purchaser in relation to the use or repair of the goods be construed as a waiver of the terms of this warranty. Also, the warranty period for parts repaired or replaced ends at the time the warranty on the goods originally supplied ends.

24. Purchaser shall indemnify and hold Ziggity harmless against any claims from third parties relating to the goods and services provided to purchaser by Ziggity and all costs resulting therefrom if and insofar as the claims exceed Ziggity's liability to purchaser.

25. If any goods are considered by purchaser to be defective and are to be returned to Ziggity or repaired or replaced by Ziggity under Ziggity's warranty, the following procedure must be followed:

- the purchaser must contact Ziggity within 8 days after defects were first recognizable and coordinate verification of the defect and obtain approval of the return in advance;
- the purchaser must give Ziggity cooperation to verify the defect at Ziggity's offices, at purchaser's site and/or in the field, at Ziggity's request, and remedy the defect; and
- the defective part shall be returned to Ziggity at purchaser's cost and risk of loss and accompanied by the Ziggity return authorization number.

If the warranty claim is admitted, Ziggity will have fulfilled its warranty obligations when it has returned, at Ziggity's expense, the repaired or replaced part. Ancillary work and all other costs in respect of returned or replaced parts not under warranty shall be for the account of the purchaser.

26. Complaints in respect of the quantities or measurements of goods delivered must be submitted to Ziggity in writing within 10 working days after the products are installed, but in any event not later than 30 days after the products are delivered, whichever date occurs first.

#### **Installation:**

27. The parties agree that the goods shall be installed at least in accordance with the instructions and/or guidelines issued by Ziggity. Ziggity shall have no liability to purchaser or any other party for any reason if the goods are improperly installed by persons other than employees of Ziggity.

28. In the unlikely and rare event that Ziggity has agreed in writing to supervise and/or install the goods, the parties shall agree upon a date of installation. If that date is later postponed by the parties, the date of delivery of the goods shall be likewise postponed. If purchaser postpones the date of installation, purchaser shall provide Ziggity with at least three working days advance notice of the postponement to permit Ziggity to avoid unnecessary transit expenses of its employees and the like. Failing that timely notice, the expenses so incurred are considered for purchaser's account.

#### **Force Majeure:**

29. If Ziggity is prevented from or restricted in performing any of its obligations under the contract by any force majeure of a temporary or permanent nature, Ziggity shall have the right, without any liability to purchaser for damages, to either cancel the contract in whole or part or suspend performance under the contract in whole or part by giving written notice to the purchaser. In the event that such a suspension exceeds three months in duration, either party shall have the right to cancel that suspended portion of the contract.

30. A force majeure means a circumstance that is beyond reasonable control by Ziggity, such as a flood, fire, earthquake, strike, lock-out, severe weather, war, governmental restrictions on import, export and/or transit, default by suppliers, and the like.

**Applicable Laws:**

31. All contracts shall be construed as entered into by the parties in the State of Indiana, U.S.A., at the offices of Ziggity, regardless of where the goods and/or services are to be provided to purchaser. The parties agree that all contracts are to be interpreted for all purposes under the laws of that state. In the event of any dispute between the parties concerning any contract, the applicable state or federal court within the State of Indiana shall be the exclusive forum for use by the parties in any litigation to resolve that dispute.

32. The United Nations Convention on contracts for the international sale of goods is expressly excluded from applicability in any contract between the parties.

33. The English text of these General Conditions of Sale and Delivery shall prevail over any translations thereof in the event of any inconsistency between texts of different languages.

34. In the event that any portion of these General Conditions of Sale and Delivery are invalid or unenforceable under applicable law, that portion shall be deemed stricken and the remaining conditions shall continue in full force and effect.

35. This document contains the full and complete understanding of the parties with respect to the subject matter herein and supersedes and replaces any and all previous understandings and/or agreements as to that subject matter.