



X-TREME SYSTEMS
INSPIRATION THROUGH DESIGN

Terms & Conditions of Sale

X-Treme systems ltd

1. Definitions

- 1.1 'Company' - Means X-Treme Systems ltd, Unit J1, Harrison Rd, Airfield Business Park, Market Harborough, LE16 7UL (company number 9867673).
- 1.2 'Conditions' - Means the terms and conditions of sale set out below and any special terms and conditions agreed in writing by the Company.
- 1.3 'Contract' - Means the contract for the sale of the Goods.
- 1.4 'Customer' - Means the entity or person that buys or agrees to buy the Goods from the Company.
- 1.5 'Goods' - Means the articles which the Customer agrees to buy from the Company.
- 1.6 'Price' - Means the price quoted for the Goods but, unless otherwise agreed in writing, excluding carriage, packing, insurance and VAT.

2. Application of Conditions

- 2.1 All quotations given, orders accepted and all Contracts entered into are subject to these Conditions. All other written or oral terms, conditions or warranties whatsoever are excluded from the Contract or any variation thereof unless expressly accepted by the Company in writing. No servant or agent of the Company has power to vary these Conditions orally or to make any statement or representation about the Goods, their fitness for any purpose or any other matter whatsoever. If any statement or representation has been made to the Customer by the Company, its servants or agents, upon which the Customer relies (other than in the documents enclosed with the Company's quotation) then the Customer must set out that statement or representation in a document to be attached to or endorsed on the Customer's order and in any such case the Company may confirm, reject or clarify the point and submit a new quotation.
- 2.2 These Conditions shall be incorporated into any Contract between the Company and the Customer to the exclusion of any terms or conditions stipulated or referred to by the Customer. Any dealings with the Company following receipt by the Customer of notice of these Conditions shall automatically be deemed acceptance thereof notwithstanding the absence of formal acknowledgement.

3. Quotations and Orders

- 3.1 No quotation issued by the Company shall be valid unless it is signed by a duly authorised representative of the Company. Quotations shall only be valid for the period specified therein or, if no such period is specified, for a maximum period of 30 days from the date thereof, and they may be withdrawn or cancelled by the Company at any time within any such period by written or oral notice.
- 3.2 Quotations are for the whole of the Goods for which quotations are given by the Company and the Company may refuse to accept any order which is not for all of the Goods forming the subject of the quotation. Subject to that, an order for Goods the subject of the Company's quotation that is received by the Company within the period for which the quotation is valid shall constitute acceptance of the Company's offer to supply those Goods and shall be binding on the Company and there shall be a Contract for the supply and purchase of the Goods.
- 3.3 Subject to Clause 3.2, no order shall be binding on the Company unless it has been accepted in writing by the Company; and the Company may decline to accept any order. The Company will normally accept the Customer's order using the Company's Official Order Acknowledgment form. When the Company has accepted the Customer's order there shall be a Contract for supply and purchase of the Goods.
- 3.4 No Contract can be cancelled or varied by the Customer except with the written consent of the Company. Such consent may be given, withheld or conditional at the Company's absolute discretion.
- 3.5 The Customer shall be responsible for ensuring the accuracy of any order, including any applicable specification.
- 3.6 The Company reserves the right to update and/or amend any design, specification or construction of the Goods without notice to the Customer.
- 3.7 The Customer shall be responsible for determining the suitability of the Goods for their intended purposes.

4. Delivery

- 4.1 The Company shall deliver the Goods to such premises as the Company shall agree in writing at any time after the Company has notified the Customer that they are ready for delivery. If the Customer requires delivery to premises other than its own premises, the Customer must confirm this in writing using the Company's Direct Delivery Request Form.
- 4.2 The Customer and the Company shall agree in writing a time and date for delivery of the Goods. The Customer shall begin unloading the Goods from the Company's vehicles within 30 minutes of the agreed delivery time. The Company shall be entitled to charge the Customer per hour or part thereof the Company's administrative charge in force from time to time for any delay in the unloading of the Goods greater than 1hour from the agreed time of delivery of the Goods.
- 4.3 The Company shall use reasonable endeavours to deliver at the agreed time but, provided it has used such endeavours, shall not be liable for failure to do so. The Customer shall have no right to cancel any Contract for failure by the Company for any cause to meet any delivery time stated. The Customer shall not have any priority of supply of the Goods.



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- 4.4 All times quoted for delivery are from the date of receipt by the Company of a written order. Alterations by the Customer in its requirements may result in delay in delivery.
- 4.5 The Company shall deliver as near as possible to the place of delivery agreed in writing by the Company so long as there exists a safe and adequate access thereto and so long as the delivery vehicle can park legally. The Customer is responsible in all cases for providing suitable facilities for unloading, and for effecting unloading of, the delivery vehicle and shall be responsible for loss of or damage to the Goods during the course of such unloading.
- 4.6 Entry of any vehicle of the Customer or its agent on to the Company's premises to collect the Goods shall be at the sole risk of the Customer or its agent save to the extent that any claim arises from the Company's negligence resulting in personal injury or death.
- 4.7 The Company shall endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. If the Customer requests a change in delivery date within three working days of the agreed delivery date, then the Company shall be entitled to charge an administrative fee of either 15% of the Price or the Company's administrative charge in force from time to time, whichever is greater.
- 4.8 If the Customer fails to take delivery of all or part of the Goods, the Customer shall pay the Company all costs and expenses arising from such failure including without limitation a reasonable charge for storage, insurance and transportation costs and an administrative charge of either 15% of the Price or the Company's administrative charge in force from time to time.
- 5. Risk and Title in Goods**
- 5.1 Risk of loss of, damage to or deterioration in the Goods shall pass to the Customer:
- 5.1.1 on delivery if the Company delivers the Goods in the Company's standard packaging; or
- 5.1.2 if in accordance with the Customer's request the Company delivers the Goods in packaging other than the Company's standard packaging or if the Customer collects or arranges for collection of the Goods, at the time when the Goods leave the premises of the Company.
- 5.2 Title to the Goods or any relevant part thereof shall only pass to the Customer once all sums (including interest) which are due to the Company from the Customer in respect of the Goods and under any other contract have been received by the Company. Until then, title shall remain with the Company.
- 5.3 The Customer grants the Company, its agents and employees an irrevocable licence to enter any premises where the Goods are stored to inspect the Goods, or, where the Customer's right to possession has terminated, to recover the Goods.
- 5.4 Until such time as the title in the Goods passes to the Customer, the Customer shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property.
- 5.5 The Customer may, before title has passed to it, use the Goods or resell the Goods on its own behalf in the ordinary course of its business at full market value and, if it does so, shall hold the payment for such Goods on trust for the Company. Such rights may be terminated immediately upon written notice by the Company to the Customer, and, if the Customer is then in possession of the Goods, the Company may at its sole discretion (a) direct the Customer to forthwith return such Goods to the Company at the Customer's expense or (b) recover such Goods.
- 5.6 If, before title in the Goods has passed, the Customer becomes insolvent, makes or attempts to make any arrangement or composition with its creditors, or enters into liquidation, or a receiver, administrator or administrative receiver is appointed over the whole or part of its undertaking or assets then the Company shall be entitled to recover the Goods.
- 5.7 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company.
- 6. Prices**
- 6.1 The Customer shall pay to the Company, in addition to the Price, all costs and charges relating to carriage, packing, insurance and VAT ('the Costs and Charges').
- 6.2 The Company may, in the event of (a) any increase in the cost of labour, materials, overheads, transport, taxes, duties or any other costs whatsoever associated with the manufacture or delivery of the Goods and/or (b) any fluctuations in exchange rates affecting the cost of imported Goods or prices quoted other than in sterling, vary the Price of the Goods agreed in the Contract and/or the Costs and Charges.
- 6.3 If any alteration or modification in design, quantity, specification or other requirements in the Goods requested by the Customer is accepted by the Company, the Company shall be entitled to make an adjustment of the Price corresponding to such alteration.
- 6.4 Where the Price includes the whole or part of the cost of any tooling the Customer acknowledges that unencumbered and exclusive title in such tooling shall have vested in the Company and that the Customer has no claim to or rights therein.
- 7. Terms of Payment**
- 7.1 Unless otherwise agreed by a duly authorised representative of the Company in writing the Customer shall pay the Price and the Costs and Charges within 30 days of the date of the Company's invoice. The time for payment of the Price and the Costs and Charges shall be of the essence of the Contract.
- 7.2 The Company shall submit its invoice on or at any time after the despatch of the Goods from the Company's premises, save that where delivery or performance has been postponed at the request of or due to the default of the Customer, then the Company may submit its invoice for the Goods at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default of the Customer.



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- 7.3 All payments shall be made to the Company in sterling (or in such currency as has been otherwise agreed in writing) at the address shown on the Company's invoice. Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Conditions.
- 7.4 The Customer shall pay all amounts owing to the Company in full without any set off, counterclaim or other deduction.
- 7.5 Any failure by the Customer to pay any sums due and payable by it under the Contract when due shall entitle the Company to:
- 7.5.1 suspend without notice deliveries of Goods under this or any other Contract with the Customer for so long as the default continues; and/or
 - 7.5.2 treat this Contract as repudiated by the Customer; and/or
 - 7.5.3 cease to fulfil further orders placed by the Customer until payment in full of the outstanding amount has been received; and/or
 - 7.5.4 recover the Goods; and/or
 - 7.5.5 amend its terms of payment for future delivery of the Goods; and/or
 - 7.5.6 charge the Customer interest both before and after any judgment (calculated annually but accruing on a daily basis) on the amount unpaid, at the rate of 8% per annum above the base rate of Barclays Bank Plc from time to time, until payment in full is made.
- 8. Short Delivery and Defects Apparent on Inspection**
- 8.1 The Customer shall have no claim for shortages, defects or other damage apparent on visual inspection unless the Customer:
- 8.1.1 inspects the Goods within 3 working days of arrival at its premises or other agreed destination and notifies the Company of the claim orally within such period; and
 - 8.1.2 makes a written complaint to the Company and to the carrier (if applicable) within 7 days of receipt of the Goods or such shorter period as the carrier's conditions require specifying the shortage, defect or damage; and
 - 8.1.3 gives the Company a reasonable opportunity to inspect the Goods and investigate any complaint before any use of or alteration to or interference with the Goods.
- 8.2 If the provisions of Clause 8.1 are not complied with then the Goods shall be deemed to be in all respects in accordance with the Contract and the Customer shall pay for the same accordingly. If short delivery does take place, the Customer shall not reject the Goods but shall accept the Goods delivered as a part performance of the Contract.
- 8.3 The Customer shall have no claim for non-delivery unless a written complaint is made to the Company and to the carrier within 3 days of the date of the Company's corresponding invoice or advice note or such shorter period as the carrier's conditions (if applicable) require.
- 8.4 If the Company is satisfied that the defect or damage notified in accordance with Clause 8.1 is not due to damage in transit or due to the acts or omissions of the Customer or any third party, the Company shall at its option repair or replace free of charge and within a reasonable time any Goods lost in transit or found to be defective or damaged on visual inspection. The Customer shall accept such repaired or replacement Goods and the Company shall be under no further liability in respect of any loss or damage whatsoever arising from the initial delivery or lack of delivery or from any delay before the defective Goods are repaired or the replacement Goods are delivered. The Company may, within 14 days of receiving written notice of the damage or defect in accordance with Clause 8.1 (or 30 days if the Goods are situated outside the United Kingdom) inspect the relevant Goods. If, in the Company's reasonable opinion, such defect or damage is due to damage in transit or due to the acts or omissions of the Customer or any third party, the Customer shall be liable for all costs and expenses incurred by the Company in investigating the Customer's complaint concerning the Goods and the Company shall have no liability for the defect or damage.
- 9. Warranty**
- 9.1 The respective warranty periods for different Goods and parts thereof shall be as set out the Company's sales brochure current at the time that the Contract is entered into ('the Warranty Period'). The Company warrants that the Goods and/or the parts of the Goods will, for the applicable Warranty Period starting from the date of delivery, when properly stored, transported, installed and used, accord with any specification specifically agreed by the Company in writing. All other representations, warranties or conditions as to quality, description, fitness for purpose or otherwise (whether express or implied, statutory or otherwise) are excluded to the fullest extent permitted by law.
- 9.2 If the Goods or parts of the Goods do not comply with the warranty in Clause 9.1, the Company shall at its option repair or replace free of charge and within a reasonable time any such defective Goods or parts thereof. The Customer shall accept such repaired or replacement Goods or parts thereof and the Company shall be under no further liability in respect of any loss or damage whatsoever arising from the breach of such warranty.
- 9.3 The Company may, within 14 days of receiving written notice that the Goods do not comply with the warranty in Clause 9.1 (or 30 days if the Goods are situated outside the United Kingdom) inspect the relevant Goods. If, in the Company's reasonable opinion, the Customer is unable to establish breach of such warranty, the Customer shall be liable for all costs and expenses incurred by the Company in investigating such alleged breach.



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10. Liability

- 10.1 Under no circumstances shall the Company be liable, for breach of contract, in tort (including negligence) or otherwise, for any loss of profit, revenue, savings, goodwill, business or other financial loss of any kind, or for any indirect or consequential loss whatsoever arising out of or in connection with the Contract.
- 10.2 If, in spite of provisions in the Contract which purport to exclude or limit the Company's liability, the Company is found liable, then the Company's liability, for breach of contract, in tort (including negligence) or otherwise, shall be limited to the sums paid for the Goods in connection with which such liability arises.
- 10.3 Nothing in the Contract shall operate to exclude or limit the Company's liability for death or personal injury resulting from the negligence of the Company, or for the breach of the Company's implied undertaking as to title, or otherwise in so far as the Company's liability may not lawfully be limited.

11. Intellectual Property

- 11.1 The Customer shall indemnify the Company from and against all actions, claims, costs and proceedings which are brought or threatened against the Company by a third party arising from the manufacture of the Goods to any drawing or specification supplied by the Customer.
- 11.2 Copyright, design right and all other rights in all designs, specifications, drawings, documents, and other items and information supplied by the Company are reserved to the Company. In particular, but without limitation, all copyright, design right and other rights in and relating to any of the foregoing produced by the Company specifically for the Customer shall belong to and vest in the Company absolutely and exclusively. The Customer shall not reproduce, sell, loan, exhibit, publish or give away any such designs, specifications, drawings, documents or other items or information without the prior written consent of the Company and the Customer shall not use them in any way except in relation to the Goods in respect of which they are issued.

12. Force Majeure

The Company shall not be under any liability to the Customer in respect of any failure to perform or delay in performing any of its contractual obligations to the Customer to the extent that such failure or delay is caused by circumstances beyond the Company's reasonable control, including without limitation any failure on the part of any supplier to the Company to discharge its obligations to the Company on time.

13. Termination

- 13.1 The Company may terminate the Contract by written notice to the Customer having immediate effect if:
- 13.1.1 the Customer becomes insolvent, makes or attempts to make any arrangement or composition with its creditors, or enters into liquidation, or a receiver, administrator or administrative receiver is appointed over the whole or part of its undertaking or assets; or
- 13.1.2 the Customer fails to pay when due any sum payable to the Company under the Contract.

13.2 Termination of the Contract shall not affect any right or obligation of either party accrued prior to termination.

14. Miscellaneous

- 14.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business. Notices served by fax will be deemed received when sent, subject to issue of a valid transmission slip. Notices served by post will be deemed received 2 business days after posting. Notices served from outside the UK must be sent by fax.
- 14.2 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the Contract and the remainder of the provisions in question shall not be affected thereby.
- 14.3 Nothing in the Contract is intended to confer any benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no third party shall have the right to enforce any rights under the Contract, except where otherwise agreed in writing.
- 14.4 All rights and remedies of the Company under or in relation to the Contract are cumulative and exercise of any such right or remedy shall not preclude the exercise of others.
- 14.5 Any waiver by the Company of any breach by the Customer of any provision of the Contract shall not be deemed to be a waiver of any later breach or default and shall in no way affect the other terms of the Contract.
- 14.6 The Customer shall not assign any or all of its rights or obligations under the Contract.

15. Legal

The Contract shall be governed by and construed in all respects in accordance with the Laws of England and the Company and the Customer hereby irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any controversy or claim arising out of or in connection with any Contract.