

## TERMS & CONDITIONS OF SALE

### 1 DEFINITIONS

**'the Company'** – Nexus Open Systems Limited (registered in England under number 3603046). 'ExeSight Photography' and 'LyncStore' are trading names of Nexus Open Systems Ltd.  
**'the Buyer'** – The person, company or organisation that accepts the quotation from the Company, purchases the Goods and with whom the Contract is made with the Company.  
**'the Goods'** – The Goods (including any instalment of the Goods or any part of them), which the Company is to sell in accordance with these Conditions and save where inconsistent with these Conditions. Goods include any third party products, services or advice.  
**'the Manufacturer'** – The manufacturer(s) or the manufacturer's regional distributor of the Goods.  
**'Third Party Products'** – Products not manufactured or assembled or authored by the Company and supplied to the Company by third parties for re-supply by the Company.  
**'the Services'** – The Services are performed by the Company pursuant to any services selected by the Buyer. These services will start on the agreed date as shown on the Invoice.  
**'the Conditions'** – The conditions of Trading are set out in this document and may also (unless the context otherwise requires) include any special terms and conditions agreed in writing between the Company and the Buyer.  
**'the Contract'** – The contract for the purchase and sale of the Goods.  
**'Writing'** – Includes electronic data transfer (including but not limited to) e-mail, cable, facsimile transmission and a compliant form communication.  
**'Invoice'** – The document that is sent by the Company to the Buyer, demanding payment for the Goods and containing, recording and evidencing contractual terms relating to the agreement.  
**'Published Data'** – Data in relation to the Goods published in any form including the Internet.  
Any reference in these Conditions to any provision of a Statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

### 2 QUOTATIONS, ORDERS & ACCEPTANCE

- The Company shall sell and the Buyer shall buy the Goods, in accordance with any quotation of the Company which is accepted by the Buyer, or any order of the Buyer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which, any such quotation is issued or any order is made or purported to be made, by the Buyer.
- These conditions together with the price, quantity and delivery details stated in the invoice and/or any written acceptance/acknowledgement constitute the entire agreement between the Company and the Buyer.
- These Conditions may not be altered unless so agreed in writing by a duly-authorised employee of the Company and the Buyer.
- The Company reserves the right to refuse the Buyer's acceptance of a quotation unless the quotation is stated to be open for a specific period and is not withdrawn in such a period.
- A quotation, unless otherwise stated, all prices are exclusive of VAT and the period not exceeding 7 days.
- The Goods which are supplied only in multiples and/or minimum order quantities.
- Any advice or recommendation given by the Company or its employees to the Buyer or its employees, which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk.
- Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, written communication or other documents or information issued by the Company shall be subject to correction without any liability on the Company's part.
- The Company reserves the right to sub-contract its obligations under the Contract and/or make changes to the specification of the Goods, which are required to conform to any applicable statutory or EU requirements.
- Neither party shall, without the prior written consent of the other, disclose or use any trade secrets or other instruments of a confidential nature of the other except as properly required as part of the Contract or as required by law.

### 3 PRICE – EXCLUSIONS & ADJUSTMENTS

- Goods are invoiced at the ruling price at the date of invoice. All prices are subject to the addition of VAT at the prevailing rate. Unless the Buyer is otherwise notified, all prices are exclusive of VAT and the period not exceeding 7 days.
- The Company reserves the right at any time prior to delivery of the Goods to adjust the price in proportion to any increase of costs to the Company. Between the date of the Contract and the date of delivery including, but not limited to any increase as a result of the Buyer, rescheduling costs, the cancellation of any part of the order, non-adherence to agreed arrangements and pre-requisites and/or the increase of costs in material, labour transport taxes and currency fluctuations and any other matter beyond the Company's control.

### 4 DELIVERY

- Delivery of the Goods shall take place when the goods are delivered at the address specified by the Buyer verbally or in writing.
- Goods shall be at the Buyer's risk from the moment of delivery and the delivery dates and times are only estimates and are not conditions.
- The required delivery date by the Buyer will be achieved by the Company whenever practical but the Company shall not be liable for failure to deliver on such date(s) or for any damage or any direct or consequential loss arising directly or indirectly out of such ostensible delay. The Buyer will accept the goods even if delivered late and late delivery will not entitle the Buyer to terminate the contract or to claim damages or interest.
- The Company will accept no liability for any shortages or damages unless notified, in writing, by the Buyer within 24 hours of delivery of goods.
- Goods received in a damaged or unsatisfactory condition must be signed for as such. On receipt, goods should be checked with the delivery note enclosed. Shortage or damage claims will only be considered if the carriers and the Company receive notification of any such shortage or damage within 24 hours of delivery of Goods, failing which, no liability will be admitted. All packing and contents must be retained for inspection.
- The Company will, when it delivers delivery, repair or replace free of charge, goods damaged in transit provided that all of these related conditions are met.
- The Buyer shall be responsible for complying with all conditions and requirements of the carriers.
- Under-delivery of Goods shall not give the Buyer any right to reject the Goods delivered or to claim damages and the Buyer is obliged to accept and make payment.
- Changes to specification or instructions may affect the delivery time and date.
- Should the work be suspended at the request of or delayed by the Buyer for a period of 30 days, then the Company shall be entitled to payment for work already carried out and any other incurred cost (inclusive) through drastic delivery date and time changes.
- When providing Goods, the Company shall use reasonable endeavours to meet the relevant requirements of the Buyer.
- The Buyer must pay all delivery charges for carriage to and from the Company's premises or its suppliers.

### 5 PAYMENT

- If agreed in writing, payment for the Goods shall be made not later than 30 days from the date of the invoice. If the Company has agreed to a credit agreement in writing, then payment must be when agreed in the credit agreement. The Company has the right to withdraw any credit facilities at any time. If the trading relationship becomes terminated at any time all sums owed become payable immediately.
- In the event that payment is not received within the specified period, the Company reserves the right to charge interest on overdue amounts, from the date of invoice, on the amount outstanding, at a rate of 8% above the base rate for the time being of the Bank of England, per month or part of a month until payment in full has been received. The Company can exercise this right in addition to any other rights it may have in respect of goods or non-payment.
- Where the Company has offered discount on goods or services or for settlement within a stated period, such discount will be non-negotiable and forfeited if payment is not received by the due date. If the Buyer fails to pay for any instalment, delivery or part in accordance with the terms of this contract, the Company may withhold further deliveries until such payment is made or (at the Company's discretion) may exercise any of the following rights either alone or in combination:
  - Terminate the contract, but Recover goods already delivered which are not paid for c) Retain all payments already made.
- If, 1) The Buyer is unable to pay its debts as they fall due or is otherwise insolvent, 2) A receiver or administrative receiver is appointed over any part of the Buyer's business or assets, 3) The Buyer (as an individual) makes or offers to make any arrangement or composition with the creditors or commits any act of bankruptcy or a bankruptcy petition is presented against it; or (if the Buyer is a limited company) any resolution or petition to wind it up is passed or presented or any steps are taken to appoint an administrator or an administrator is appointed over it; Then all invoices for Goods, which have been delivered to the Buyer, shall become due and payable forthwith and such credit arrangements as may have been made for the same shall automatically come to an end. In the event that delivery has yet to be made, then in addition, to and without prejudice to the Company's rights at Common Law, equity and statute, it shall be entitled as its option to cancel the contract or to cancel or suspend the delivery of Goods.
- The Buyer must notify the Company of any changes of finance that would affect the Company without delay.

### 6 TITLE OF GOODS

- No property or title to goods shall pass from the Company to the Buyer unless and until the buyer has made full and complete payment to the Company of all sums due in respect of the Goods. So long as title and property of the Goods shall remain with the Company the Goods shall be set aside from the Buyer's general stock of goods and other property and shall be marked with an indication that they remain the property of the Company. So long as title to any goods remains with the Company the Buyer will insure them against loss or damage under a policy, which protects the Company's interest in the goods.
- The Buyer shall immediately return the goods to the Company, at the Buyer's own expense, should the Company so request. If, in the normal course of business, the Buyer shall sell the Goods then he shall do so as agent for the Company and out of the proceeds of such sale shall retain the amount due to the Company in a separate identified bank account as trustee for the Company and the title of goods still remaining with the Company.
- The Buyer hereby understands and agrees that, if the Buyer shall commit any breach of it's obligations to the Company including, without limitation, failure to pay any sum due to the Company on or before the due date, the appointment of a Receiver of the Buyer's business or the presentation of a Petition to 'Wind up' the Buyer will commence and that the Company, or it's servant or agents, shall have the right with or without prior notice at any time to re take possession of the whole or any part of the Goods (and for that purpose to go on to any premises occupied by the Buyer,
- End User or any subsidiary, parent or associated company of the Buyer) which are the subject of any contract between the Company and the Buyer (or any parent subsidiary or associated company of the Buyer) to the value of all sums due to the Company without prejudice to any other remedy of the Company. The Buyer shall indemnify the Company against any loss of, or damage to, the Goods prior to the passing of property therein on or after delivery to the Buyer.

### 7 FORCE MAJEURE & LIABILITY

- The Company shall not be under any liability whatsoever, for failure to perform or delay in performance in whole or in part of its obligations under the Contract due to causes beyond the control of either the Company or of the Company's suppliers, including but not limited to, acts of God, acts of the Buyer or third party, war, sabotage, insurrection, government regulations, embargo's strikes, labour disputes, illness, flood, fire or tempest causing delay in delivery to the Company or the Company's suppliers or shortage of any goods or materials. In any such event, the Company may, without liability, cancel or vary the terms of Contract including, but not limited to, extending the time for performing the Contract for a period of time at least equal to the time lost by reason of such an event.

### 8 EXPORT

- Where the Goods are supplied for export from the United Kingdom, (subject to any special terms agreed in writing) apply notwithstanding any other provision of these Conditions.

- The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment.
- The Company shall have no liability for any claim in respect of any defect in the Goods, which would be apparent on inspection and which are made after shipment, or in respect of any damage during transit.
- Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a bank acceptable to the Company or, if the Company has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Company f or a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Company at such a branch of the bank in England as may be specified in the bill of exchange.
- The Buyer undertakes not to offer the Goods for resale outside the United Kingdom or any other country notified by the Company to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.
- All Goods shall be paid for and damages payable under these Conditions shall be paid in Sterling unless otherwise agreed in Writing by an authorised employee of the Company.
- The Seller hereby excludes liability in respect of any claim that the Goods infringe or that their use or resale infringes the patent, copyright, design, trademark or other industrial or intellectual property right of another person. In the event that any such claim is made the Buyer shall: 1) promptly notify the Company of the allegation 2) allow the Company to dispute the allegation and any legal proceeding relating to it in such manner as the Company thinks fit and to have sole control, at it's expense of any litigation and/or negotiations relating thereto 3) not, without the Company's consent in Writing, make any admissions of liability.
- The Company shall comply with the export control regulations of the United Kingdom and the United States of America and shall indemnify the Company and any Group Company against loss, damages, costs and expenses awarded against or incurred by the Company or any Group Company as a result of the breach of the said regulations.

### 9 RETAINED TECHNICAL SERVICES (RTS)

In respect of Retained Technical Services, the Company shall not be liable for any damages, including but not limited to any direct, indirect, special, incidental or consequential damages, resulting from any use of, or inability to use the software programs subject to a minimum charge of £30 2) The Buyer shall obtain a Returns Authorisation Number from the Company and comply with the Company's Returns procedure and 3) The Goods must be delivered to the specified premises in its original packaging and accompanied, in full, by all related and original literature, hardware, software 4) The Goods shall be returned 'carriage paid' at the Buyers expense.

Any article, which has been supplied to special requirements, may only be accepted back for credit if faulty or if the special requirements were not to the order. Any additional costs incurred from the Company's suppliers or Manufacturers in relation to such returns may also be recharged to the Buyer.

### 10 CANCELLATION

No contract or order may be cancelled without the Company's written consent. In the event that cancellation is agreed for reasons other than those stated above, the Buyer shall indemnify the Company against all costs, claims, loss and expense occasioned thereby including any consequential loss and loss of profits.

### 11 RETURNS

- The Company shall be under no obligation to accept return of any Goods other than as provided to order. If notwithstanding the Company shall in any particular case agree to accept return of Goods which are not defective then it shall only do so on terms that 1) The Buyer shall pay a sum in respect of the costs so incurred by the Company equal to 25% of the full invoice price subject to a minimum charge of £30 2) The Buyer shall obtain a Returns Authorisation Number from the Company and comply with the Company's Returns procedure and 3) The Goods must be delivered to the specified premises in its original packaging and accompanied, in full, by all related and original literature, hardware, software 4) The Goods shall be returned 'carriage paid' at the Buyers expense.
- Any article, which has been supplied to special requirements, may only be accepted back for credit if faulty or if the special requirements were not to the order. Any additional costs incurred from the Company's suppliers or Manufacturers in relation to such returns may also be recharged to the Buyer.

### 12 WARRANTY

- The Goods sold by the Company are warranted free from defects in materials and workmanship for a period of 12 months from the date of sale (except goods indicated as 'used' where the maximum warranty shall not exceed 3 months, unless otherwise stated). Fair wear and tear or any misuse/mishandling is excluded. Faulty goods, if under warranty, are to be returned to the original supplier, complete with all related literature, hardware and software, for replacement. In the event that no identical match can be found replacement will be with goods of equal or better quality. Any unauthorised repairs/modifications attempted on goods will immediately invalidate any such warranty and the Company shall not be held liable. The Company reserves the right to refuse to give full refunds on goods exceeding 3 months from date of invoice and to offer full and satisfactory remedy of any shortfall in service or performance from the Company. (This is, however, does not affect the Buyer's statutory rights under the Sale of Goods Act).
- Any warranties, implied or otherwise, for services relating to 'Retained Technical Service' (RTS), On-Site' or 'Return To Base' (RTB), are valid only for the Buyer at the buyer's invoiced address, in the UK mainland, unless otherwise agreed and notified in writing. If the Buyer re-sells the goods the Company shall not be liable for any such warranties, unless otherwise agreed and notified in writing.
- The Company shall be responsible for the Company regarding data related issues is supplied in reliance upon information supplied by the Manufacturer. The Company has not independently verified the accuracy of the information supplied by the Manufacturer nor has it performed any independent assessment of the Goods or information supplied. The Buyer irrevocably acknowledges and accepts that such information (whether oral or in writing) shall not be guaranteed or warranted as to its accuracy by the Company nor shall it be deemed to be a representation, which induced the Buyer to enter into the contract. Without prejudice to the generality of the foregoing the Company gives no guarantee or warranty that the Goods have no data issues.
- The Company warrants that it will use its reasonable endeavour to notify the Buyer if it has purchased such Goods within the last 12 months and places an order for replacement. In the event that the Company is in breach of the warranty then it will, at its option, replace, repair or issue a credit note to the Buyer for such Goods or a proportionate part thereof.

### 13 PERSONNEL

The Buyer agrees not to approach or employ the Company's personnel to work for them in any capacity for a minimum period of six months after such personnel leave the employment of the Company except with the express written permission of the Company. In the event that the Buyer engages any of the Company's personnel the Buyer shall pay an introduction fee equivalent to 26 weeks of the engaged person's remuneration.

### 14 SPECIFICATION AND PERFORMANCE

- All drawings specification and technical documents issued by the Company at any time in relation to the contract are issued solely for the Buyers use in connection with the Goods and shall not be copied, reproduced or communicated to any third party without the Company's express written agreement.
- The Company reserves the right to alter or depart from any specification or design of any Goods sold provided that such alteration or departure shall not to a material extent adversely affect the performance of the Goods or the quality of the workmanship or materials used.
- Unless otherwise expressly agreed in writing any performance figures quoted or referred to in any specification or other document are estimates only based on assumed conditions in a well-managed office with experienced adequate and efficient operatives and appropriate services and proper use of satisfactory material.

### 15 REPRESENTATIONS

The Company shall not be liable to the Buyer for misrepresentation by virtue of any statement made by or on behalf of the Company prior to the contract whether orally or in letter, document or sales literature and the Buyer shall not be entitled to rescind the contract on the grounds of any such misrepresentation.

### 16 PATENT RIGHTS

The sale of Goods by the Company and the publication of any information or technical data relating thereto does not imply freedom from patent, copyright, registered design or other industrial or intellectual property rights, in respect any particular application of the Goods. If the Goods are to be manufactured by the Company or any process is to be applied by the Company upon the Goods in accordance with the specification submitted by the Buyer, the Buyer shall indemnify the Buyer against the loss, damages, costs, and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claims of infringement of any patent, copyright, trade mark, or other industrial or intellectual property rights of any other person, which results from the Company's use of the Buyers specification. Copyright to any software whether on its own or in conjunction with other Goods shall remain vested in the copyright Owner and the Producer shall not reproduce or adapt such software in whole or in part without the prior agreement in writing to the Copyright Owner.

### 17 INTELLECTUAL PROPERTY RIGHTS

- Without prejudice to any other clauses herein, if any claim is made against the Buyer, in respect of the Goods supplied in the United Kingdom that the Goods infringe or that their use or resale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of drawing, design or specification supplied by the Company, the Company shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that: 1) The Company is given full control of any proceedings or negotiations in connection with any such claims 2) The Buyer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations. 3) The Buyer shall not pay (apart from a final award), or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld).
- The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavour to do).
- The Company shall be entitled to the benefit of, and the Buyer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim. Without prejudice to any duty of the Buyer at common law, the Company shall be entitled to require the Buyer to take such steps as the Company may reasonably require mitigating or reducing any such loss, damages, costs or expenses for which the Company is liable to indemnify the Buyer under this clause.

### 18 WAIVER

Failure by the Company to enforce at any time or for any period any one or more of the Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all of the Conditions. These Terms and Conditions of Sale may be varied without notice and shall together with any contract between the Company and the Buyer, be governed, in all respects, by English Law and the non-exclusive jurisdiction of English Courts.