

Terms and Conditions of Sale

TERMS AND CONDITIONS OF SALE HENRY TECHNOLOGIES LIMITED

The Buyer's attention is drawn in particular to the provisions of clauses 7 and 8.

1 Definitions and Interpretation

1.1 In this document the following words and expressions shall have the following meanings:-

“Buyer” means the company, firm or person from whom a purchase order for the Goods is accepted by the Seller.

“Goods” means the goods of the description given by the Seller which the Buyer has ordered and which order has been accepted by the Seller or any part thereof

“Price” means the price of the Goods excluding VAT and excluding the costs and charges for packaging, insurance and transport of the Goods.

“Seller” means Henry Technologies Limited (Company Number SC069447).

“Terms and Conditions” means the terms and conditions of sale set out in this document together with any other terms and conditions agreed in writing and signed between the Buyer and the Seller.

1.2 Reference to any Clause is to a clause of these Terms and Conditions.

1.3 Any reference in these Terms and Conditions to any provisions of a statute shall be construed on a reference to that provision as amended, re-enacted or extended at the relevant time.

1.4 Headings are inserted for convenience only and shall not affect the interpretation and construction of these Terms and Conditions.

1.5 Reference to writing and written includes emails.

2 Basis of Sale

2.1 These Terms and Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer and shall prevail over any terms and conditions which the Buyer purports or seeks to apply or which are implied by trade, custom, practice or course of dealing under any purchase order, confirmation or other documents. No conduct other than express written acceptance by the Seller shall be deemed to constitute acceptance of any terms put forward by the Buyer.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Terms and Conditions. The Buyer is responsible for ensuring that the terms of any order are complete and accurate.

2.3 The order shall only be deemed to be accepted when the Seller issues a written acceptance of the order, at which point a contract between the parties comes into existence.

2.4 Catalogues, brochures, sales literature, or oral or written representations made by the Seller's employees during negotiations are intended to give an approximate idea of the Goods and are not intended to form part of these Terms and Conditions and shall not have any contractual force.

2.5 No additions or variations to these Terms and Conditions including any special terms and conditions, shall be binding on the Seller unless agreed to in writing by the Seller.

2.6 Insofar as not otherwise previously accepted by the Buyer in accordance with these terms the Buyer's acceptance of delivery of the Goods shall constitute acceptance of these terms.

3 Delivery of the Goods

3.1 Unless the acceptance of the order issued by the Seller expressly provides otherwise, the place of delivery of the Goods shall be the Seller's premises.

3.2 The Seller will give the Buyer notice when the Goods are ready for delivery. Within seven days commencing on the day of the service of that notice the Buyer will collect the Goods or give the Seller instructions for their delivery.

3.3 Any dates quoted by the Seller for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a “force majeure” event or caused by the Buyer's failure to provide the Seller with adequate delivery instructions.

3.4 If the Buyer fails to collect the Goods or fails to give sufficient instructions for their delivery within that period this will constitute a breach of contract and the Seller may terminate the contract with immediate effect. On termination, the Seller may exercise its rights to do any of the following:-

3.4.1 disposal of the Goods as it thinks fit;

3.4.2 retain any deposit or part payment made by the Buyer;

3.4.3 recover damages from the Buyer in respect of any losses it suffers as a result of the Buyer's failure to take delivery, including the costs of storing the Goods, the costs of disposing of the Goods, and any other losses (including loss of profit) suffered by the Seller as a result of the Buyer's breach or termination of the contract.

3.5 Risk in the Goods shall pass on receipt by the Buyer of the notice referred to in Clause 3.2 and the Buyer will insure the goods accordingly.

3.6 In the event that the Buyer instructs the Seller to deliver the Goods in terms of Clause 3.2, and the Goods are not

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received by the Buyer, the Buyer must, within 21 days of the invoice date, notify the Seller and the carrier in writing of such non-delivery: NO CLAIMS CAN OTHERWISE BE ENTERTAINED.

- 3.7 The Buyer must carefully examine all Goods immediately on receipt of the same. If any of the Goods have sustained damage or there are any shortages, the Buyer must notify the carrier (where applicable) and the Seller of such shortages or damage within 3 days of receipt of the same, in writing. In the absence of receipt of such notice from the Buyer, the Seller shall be DISCHARGED FROM ALL LIABILITY in respect of such damage or shortages.

4 Goods, Price and Payment

- 4.1 The quantity and description of the Goods will be as set out in the Seller's quotation or as otherwise agreed to in writing by the Seller.
- 4.2 The Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 4.3 The Price shall be the Seller's quoted price or such other price as shall be agreed in writing by the Seller. Receipts for payment will be issued only on request. Payment shall be made to the bank account nominated by the Seller.
- 4.4 The Seller reserves the right to increase the Price of the Goods by giving notice to the Buyer at any time before delivery, to reflect any increase in the costs of the Seller due to any factor beyond the reasonable control of the Seller (including, without prejudice to the generality of the foregoing, any significant increase in the costs of labour, materials or other costs of manufacture) or due to any delays or changes caused by the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instruction.
- 4.5 Unless otherwise expressly agreed to by the Seller in writing, the Buyer will pay the Price in full (plus VAT) within 30 days of the date of issue of the Seller's invoice. Time of payment is of the essence. If the Buyer fails to pay the Price within 30 days then the Seller, without prejudice to its other rights or remedies, shall be entitled to:-
- 4.5.1 suspend or cancel deliveries of any goods due to the Buyer; and/or
- 4.5.2 appropriate any payments made by the Buyer to such of the Goods (or other articles or goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit; and/or
- 4.5.3 charge interest on all outstanding sums on a day to day basis until the date of payment at the rate of 3% above the Royal Bank of Scotland base rate from time to time in force until final payment of all sums due.

5 Warranty

- 5.1 The Seller warrants to the Buyer (and to no other person) that as from the date of delivery for a period of 12 months, that when applied properly under normal conditions, the Goods will be free of defects in materials and workmanship.
- 5.2 The Buyer shall have 7 days from date of discovery of such defect or when the defect should reasonably have been discovered by the Buyer, to notify the Seller with full details thereof in writing, and the Buyer shall return the defective Goods to the Seller with completed warranty documentation, and particulars of the original order number, Seller's invoice number and relevant serial number(s).
- 5.3 The Buyer will be responsible for the costs of returning the defective Goods to the Seller and delivery of any replacement Goods or return of the Goods from the Seller (as the case may be), and shall bear the risk of loss or damage to the Goods in transit.
- 5.4 If upon investigation by the Seller, the Goods are found to be defective then the Buyer's rights and remedies shall be limited to:-
- 5.4.1 replacement of the defective Goods in which case the Seller will warrant the replacement Goods for the unexpired balance of the warranty period applicable to the defective Goods; or
- 5.4.2 repayment, or credit of such part of the Price applicable to the defective Goods; or
- 5.4.3 repair of the Goods;
- 5.5 The Buyer shall not be entitled to withhold payment, or make any deduction, set off or retention in respect of the Price (or any part thereof) for any alleged breach of Clause 5.1, unless it has acted in accordance with the above Clauses 5.2 and 5.3 and if, upon investigation, and finding that the Goods are defective, the Seller has then expressly agreed to such a withholding, deduction, set-off or retention.
- 5.6 If upon investigation, the Seller finds in its reasonable opinion, that the Goods are not defective, the Seller shall notify the Buyer who shall then be responsible for collecting the Goods.
- 5.7 The Seller shall not be liable for any defect which in its reasonable opinion arises from the misuse, misapplication, negligent use of the Goods, or accident, or in respect of fair wear and tear.
- 5.8 This warranty shall not apply to Goods which have not been paid for, or which in the reasonable opinion of the Seller have been improperly applied, installed, stored, serviced, repaired or altered or fitted to inappropriate components.
- 5.9 The Buyer shall have no entitlement to return the Goods other than in the circumstances described above and the

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Seller gives no further warranty and shall have no liability for such defect or failure except in respect of death or personal injury caused by the Seller's negligence.

6 Property

- 6.1 Property in the Goods shall remain with the Seller until the Buyer shall have paid the Price in full and cleared funds (plus any VAT thereon) and any other sums of whatever nature remaining due from the Buyer to the Seller (including without prejudice to the generality of the foregoing, sums due in respect of other goods and contracts as well as any sums due in respect of interest or other charges in relation to late payment).
- 6.2 Until property in the Goods passes to the Buyer in accordance with the terms of the above clause, the Buyer shall hold the Goods on a fiduciary basis as agent for the Seller.
- 6.3 Until property in the Goods has passed to the Buyer, the Buyer shall store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property and the Buyer shall not remove, deface or obscure any identifying mark or packaging relating to the Goods.
- 6.4 Notwithstanding that the Goods remain the property of the Seller, the Buyer may sell as principal (and not as the Seller's agent) or otherwise use the Goods in the ordinary course of business at full market value and on such sale property shall pass to the Buyer and the benefit of the contract of sale and the proceeds of such sale shall belong to the Seller legally and beneficially until full payment has been received by the Seller for the Goods.
- 6.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in the Goods has not passed from the Seller. Furthermore, until such time as property in the Goods passes from the Seller, the Buyer shall upon request, deliver to the Seller such of the Goods as have not ceased to be in existence or been resold, and if the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are or are reasonably believed to be situated and recover the Goods. On the making of any request by the Seller for delivery referred to in this clause the rights of a Buyer to sell or use the Goods under Clause 6.3 hereof shall cease.
- 6.6 The Buyer shall insure and keep insured the Goods to the full price against "all risks" to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller and shall furthermore whenever requested by the Seller produce a copy of the policy of insurance.

7 Indemnity

- 7.1 The Buyer acknowledges he has the requisite skill and knowledge to deal with the Goods safely and that he will ensure that any necessary safety information is passed on with the Goods whether they are used by or on behalf of the Buyer or by any third party.

- 7.2 The Buyer agrees to indemnify the Seller against any damages, losses, costs, claims, expenses incurred by the Seller in respect of any claim brought against the Seller by any third party for:-

- 7.2.1 any loss, injury or damage wholly or partly caused by the Goods or their use;
- 7.2.2 any loss, injury or damage in any way connected with the performance of the contract between the parties.

Provided that this Clause will not require the Buyer to indemnify the Seller against liability arising as a result of the Seller's negligence.

8 Liability and Remedies

- 8.1 It is expressly understood that neither the Buyer nor the Seller are "consumers" (as defined in the Unfair Contract Terms Act 1977) and that all warranties, terms or conditions other than those given under these Terms and Conditions are hereby excluded to the full extent permissible by law.
- 8.2 Time shall not be of the essence in respect of the late delivery of the Goods.
- 8.3 The Seller shall under no circumstance whatsoever be liable to the Buyer, whether in contract, delict (including negligence), breach of statutory duty or otherwise, for any loss of profit, or any indirect or consequential loss arising in any way connected with the performance of the contract between the parties.
- 8.4 Except as provided for elsewhere in these Terms and Conditions, the total liability of the Seller shall be limited to the Price of the Goods.

9 Termination

- 9.1 Without limiting its other rights or remedies, the Seller may terminate the contract with immediate effect by giving written notice to the Buyer if:
- 9.1.1 the Buyer commits a material breach of any term of these Terms and Conditions and (if such a breach is remediable) fails to remedy that breach within 20 days of being notified in writing to do so;
- 9.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 9.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

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9.1.4 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy.

9.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under these Terms and Conditions or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in Clause 9.1, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under the contract on the due date for payment.

9.3 Without limiting its other rights or remedies, the Seller may terminate the contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the contract on the due date for payment.

9.4 On termination of the contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

9.5 Termination of the contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this contract that existed at or before the date of termination.

9.6 Any provision of the contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10 Force Majeure

10.1 If performance of the Seller's obligations is delayed or hindered by circumstances out with the Seller's control amounting to a "force majeure" event as defined hereunder, the following provisions shall apply:-

10.1.1 the Seller will as soon as reasonably practicable, give the Buyer notice of the reasons for the delay or hindrance. However, failure to give such notice will not prevent the Seller relying on the remaining provisions of this Clause and the Seller will incur no liability for failure to give such notice.

10.1.2 the Seller's duty to perform shall be suspended for as long as the circumstances amounting to 'force majeure' continue and the time for performance of the Seller's obligations shall be extended by a period equal to the duration of those circumstances.

10.2 If due to circumstances outside the Seller's control amounting to 'force majeure', there is a shortage of goods of a type to be supplied under this contract so that the Seller has or can obtain or produce insufficient goods to satisfy its contracts with the Buyer and the Seller's other customers, the Seller may allocate the goods available to it between the customers with whom it has contracts for the supply of such goods and may make that allocation on such basis as it thinks fit. In that case:-

10.2.1 the Buyer will accept and pay for such quantity of Goods delivered to it;

10.2.2 the price payable for the Goods shall be proportionate to the contract price in the same ratio as the quantity delivered to the contract quantity; and

10.2.3 the Seller shall be treated as having discharged its obligations to deliver the Goods under this contract and shall not be liable for breach of contract in respect of the failure to deliver the full contract quantity.

10.3 For the purposes of this clause, "force majeure" means any event outside the Seller's control including, but not limited to, the following: strikes, sit-ins, trade disputes, walkouts or any other actual or threatened industrial action or difficulty in obtaining labour, plant and materials or bought-in components or breakdown of plant machinery (including transport) or interruption of power supplies, fire, flood, legal action, war, civil riot or intervention by governmental authority.

11 Waiver

No failure by the Seller to enforce the Terms and Conditions shall constitute a waiver of its rights hereunder.

12 Amendment

The Terms and Conditions may be subject to amendment by the Seller from time to time by 21 days' notice given by the Seller. In the event that the Buyer does not reject the amendment within that 21 day period the Buyer will be deemed to have accepted the amendment.

13 Assignment and Sub-Contracting

The Buyer shall not assign, sub-contract or transfer the order or part thereof to any third party without the written consent of the Seller.

14 Notices

14.1 Any notice required to be given in accordance with these Terms and Conditions shall be in writing and shall be deemed to be served in the following circumstances:-

14.1.1 if sent by pre-paid first class post to the party to whom it is given and its last known address, it shall be effected on the second day after posting;

14.1.2 if sent electronically to the recipient's e-mail address it shall be effective on transmission.

15 Brochures, Drawings, Prints and Specifications

Any brochures, drawings, prints and specifications supplied by the Seller to the Buyer under or in connection with or contemplation of the contract shall remain the property of the Seller. The Buyer shall not copy or reproduce them without the Seller's prior written consent.

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16 Trademarks

The Buyer will not alter, tamper with or remove any trademarks, numbers or other means of identification used on or in relation to the Goods.

17 Entire Agreement

17.1 These Terms and Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement within these Terms and Conditions.

18 Governing Law

The interpretation of these Terms and Conditions are subject to the laws of Scotland and both the Buyer and the Seller shall submit to the exclusive jurisdiction of the Scottish Courts, except that the Seller may be entitled to proceed in any jurisdiction where proceedings may lawfully be brought against the Buyer.