

JACKPAD LIMITED
TERMS AND CONDITIONS OF SALE

1. Definitions

<i>Company</i>	means Jackpad Limited having its registered office at 19 Churchill Way, Fleckney, Leicestershire, LE8 8UD including any of its trading divisions or subsidiaries.
<i>Customer</i>	means any person, body of persons, firm or company (acting in its own right or through any employee or agent) with whom the Company enters into a contract for the sale of Goods by the Company.
<i>Contract</i>	means any such contract.
<i>Delivery</i>	means the delivery of the Goods to the address specified by the Customer.
<i>Goods</i>	means any Jackpad product to be supplied or sold to the Customer by the Company.
<i>Installation</i>	means the setting up/placing of the Goods on Site in accordance with the Customer's instructions, offered by the Company on the Customer's request as part of the delivery service.
<i>Late Payment Regulations</i>	means the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002 (both as amended).
<i>Site</i>	means the place where the Goods are to be delivered.

2. These Terms and Conditions to Prevail

- 2.1 All Contracts between the Company and the Customer, whether made orally or in writing, are subject to these terms and conditions which shall be deemed to be incorporated into any contract or transaction between the Company and all or any of its Customers.
- 2.2 These terms and conditions shall supersede all prior understandings, and shall constitute the whole agreement, between the Company and the Customer and shall not be modified or varied unless specifically accepted by the Company in writing.
- 2.3 In the event of any conflict between these terms and conditions and any other terms and conditions, whether express or implied, incorporated or referred to in any communication from the Customer then these terms and conditions shall prevail and the Customer's terms and conditions shall be excluded in whole from the Contract.

3. Quotations and Acceptance of Order

- 3.1 A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation at any time prior to the Company's acceptance of the Customer's order. Unless otherwise stated all prices quoted shall be deemed to be withdrawn 60 days after the date of quotation.

- 3.2 The Company's acceptance of the Customer's order (including telephone orders) shall be effective, and the Contract shall be deemed to come into existence, only where such acceptance is made on the Company's headed note paper, duly countersigned by a Director or Manager of the Company.
- 3.3 No cancellation or variation of an order by the Customer shall be accepted unless approved in writing by a Director or Manager of the Company and on such terms that the Customer shall indemnify the Company in full against all and any loss (including loss of profit), costs, damages, charges and expenses incurred by the Company as a result of such cancellation or variation.

4. Specification

- 4.1 The description and illustrations of the Goods given to the Customer, or contained in the Company's catalogues, brochures, price list and/or any other advertising materials, are intended to present a general idea of the Goods only and shall not form part of the Contract.
- 4.2 The Company shall not be liable for any variations in any specification or description of the Goods which do not materially affect the use and operation of the Goods, or for the substitution of any materials or component parts of a quality equivalent or superior to that originally specified and the Company reserves the right to make any changes in the specification which are required to conform with any applicable safety or other statutory requirements.
- 4.3 The Company's employees or agents are not authorised to make any representations, warranties or undertakings concerning the Goods unless confirmed in writing by the Company and, in entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, warranties or undertakings which are not so confirmed.

5. Prices

- 5.1 All prices shall be calculated and paid in Sterling unless otherwise agreed at the time of Contract.
- 5.2 All prices are quoted exclusive of VAT or other relevant taxes.
- 5.3 All rates, prices and discounts quoted to the Customer or published in the Company's catalogues, lists and other documents are subject to variation at any time prior to acceptance of the Customer's order by the Company. If (1) no rate or price is quoted or published at the time of acceptance of the order by the Company, or if (2) delivery of the Goods is to take place at the request of the Customer more than 30 days after the acceptance of the order by the Company, the price shall be that ruling at the date of delivery, as determined solely by the Company.
- 5.4 The Company reserves the right, by giving notice to the Customer at any time before delivery (or during delivery where the Contract is being performed in stages or over a period of time), to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions).
- 5.5 Unless otherwise agreed in writing by the Company, all prices are given by the Company on an ex works basis. Where the Company agrees to deliver the Goods by itself or through its agent, the Customer shall be liable to pay the Company's charges as set out in the Company's quotation and/or order acceptance form.

6. Customers Responsibilities

- 6.1 The Customer shall generally be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 6.2 Where it has been confirmed by the Company in the order acceptance that the sale of the Goods includes their Delivery and Installation, it is the sole responsibility of the Customer to ensure that the specified Site is ready and prepared for the Delivery and (if requested by the Customer) Installation of the Goods at the precise date and time agreed. Any delay to the Delivery and/or Installation date and time shall entitle the Company to make a charge for waiting time at costs plus 10 per cent. In addition, the Company in such circumstances shall be entitled to make a claim for all reasonably foreseeable loss (including loss of profit) resultant from such delay.
- 6.3 Irrespective of any prior agreement between the parties, the Company shall be under no obligation to carry out the Installation of the Goods on Site unless the Customer within at least 7 days prior to delivery provides the Company with accurate and detailed information of (1) the dimensional settings of the structure for which the Goods are intended ; and (2) the intended positioning of the buildings; and (3) the falls of ground and the finished floor level required (the *Information*).
- 6.4 Any Installation of the Goods under whatever circumstances is entirely at the Customer's risk. All Installation work carried out by the Company is strictly based on the Information supplied by the Customer. The Company accepts no responsibility for either the Information provided or the Installation process based on the Information. It is the Customer's sole responsibility to ensure the Information provided is accurate and complete. Any Installation work may be sub-contracted by the Company.
- 6.5 Where the Information in the Company's sole opinion incorrect or incomplete, the Company may at its discretion refuse to carry out the Installation of the Goods. Any loss or damage incurred by the Customer due to incorrect or incomplete Information provided by the Customer (whether at the time of the Installation or at any time thereafter) or due to the Company's refusal to carry out the Installation at the pre-agreed date and time is entirely the responsibility of the Customer.
- 6.6 The Customer is responsible for informing the Company of all relevant Site safety requirements in sufficient time prior to the agreed Delivery date. Any delay caused by the Customer's failure to provide such details shall entitle the Company to make a charge for waiting time and any consequential loss incurred. The Company shall have no liability for any loss caused to the Customer due to such delay.
- 6.7 The Customer shall be solely responsible for the security of the Goods both on and after Delivery and, if applicable, Installation.
- 6.8 The Customer is made specifically aware that the long-term stability of the Goods is dependent on the stability of the ground on which the Goods are placed and on the bearing pressure of such ground. Irrespective of whether the Company carries out the Installation of the Goods, it is the sole responsibility of the Customer to ensure that the ground stability and its bearing pressure is adequate for the intended purposes. The Company accepts no liability whatsoever for any such issues.
- 6.9 The means of unloading the Goods must in all cases be supplied by the Company.

7. Payment

- 7.1 Unless the Company confirms in writing that account facilities have been opened for the Customer, payment is due on the date stated on the Company's quote and/or order confirmation.
- 7.2 Where the Company has confirmed in writing that account facilities have been opened for the Customer, payment of any invoice must be made in full within 30 days of the date of that invoice.
- 7.3 Any amount due by the Customer to the Company under the Contract shall be payable in full without any compensation, set-off or counterclaim.
- 7.4 Time of payment shall be of the essence of all Contracts.
- 7.5 Payment must be made when due, notwithstanding that property in the Goods has not passed to the Customer.
- 7.6 Where any account, or any part thereof, is overdue for payment the Customer shall cease to be entitled to the benefit of any discount specified in that account and the Company shall be entitled to charge interest and compensation in accordance with Late Payment Regulations.
- 7.7 If the Customer fails to make timeous payment in accordance herewith then, in addition to any other remedies available to the Company, the Company may either suspend all further deliveries of the Goods under the Contract until payment is made in full or, at its option, treat the Contract as repudiated.
- 7.8 If the Customer repudiates the Contract for any reason, or is deemed to have repudiated the Contract in accordance with Clause 7.7, then the Company shall, in addition to any other remedy available to it, be entitled to seek damages for any loss suffered by it as a result of the Customer's repudiation.
- 7.9 The Company, at its sole discretion, may require full or partial payment of the price prior to delivery or the provision of security for payment by the Customer, in a form acceptable to the Company.

8. Retention of Title

This provision shall apply to all and any Goods supplied to the Customer by or on behalf of the Company:-

- (a) Legal and beneficial ownership and title in and to the Goods shall not pass from the Company to the Customer until all monies due by the Customer (or any of its associated subsidiary or holding companies) to the Company under any Contract (and this includes the Company's terms and conditions applicable to and forming part of any such Contract) between them, including any interest and charges, have been paid in full. Until such time as property and title in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the customer and third parties and free from any lien, charge or encumbrance and properly stored, protected and insured and identified as the Company's property and shall allow (without requirement for any further written consent) the Company access to the place where the Goods are stored for the purposes of verifying that this has been done.
- (b) Until such time as property and title in the Goods passes to the Customer, the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company, or its employees or agents, or, at the Company's sole discretion, forthwith to enter upon any premises or property of the Customer or any third party where the Goods are stored (with the Customer's express consent which is impliedly granted by these Terms and Conditions becoming part of the Contract) and to repossess the Goods.

- (c) The Customer shall not be entitled to pledge, or in any way charge by way of security, any of the Goods which remain the property of the Company but, if the Customer does so, all moneys owing by the Customer to the Company shall, without prejudice to any other remedy available to the Company, forthwith become due and payable.
- (d) If: -
 - (i) the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
 - (iii) the Customer ceases, or threatens to cease, to carry on business; or
 - (iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the customer accordingly

then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel any contract or suspend any further deliveries under any contract without any liability to the Customer, and if the Goods have been delivered but not paid for in full, the legal and beneficial title to the Goods remains with the Company and, provided the Goods are identifiable as the Company's, no receiver or liquidator of the Customer shall sell the Goods. In these circumstances, the Customer hereby accepts and consents that the Company shall be entitled to enter any premises or property where the Goods are located and repossess the Goods.

- (e) Until such time as property and title in the Goods passes to the Customer, the Customer shall not be entitled to in any way annex the Goods to any property or premises (whether his own or that of a third party) without the Company's prior express written consent.
- (f) The Company retains and reserves the legal and beneficial ownership and title in and to the Goods until the Customer has paid for all and any Goods supplied by the Company to the Customer and has repaid all other monies owed to the Company regardless of how such indebtedness arose.
- (g) If the Customer transfers property in the Goods to a third party prior to legal and beneficial ownership and title in and to the Goods passing to the Customer (as set out in Clause 8(a) above), the Customer must at the time of transfer notify the Company and the third party in writing of the fact that the Company retains title in and to the Goods. If the Customer fails to do so, he knowingly transfers property in which he has no rights of ownership. Any monies received by the Customer for the Goods are the sole property of the Company until legal and beneficial ownership and title in the Property has passed to the Customer and all such monies shall be held by the Customer (including its receiver, administrator, administrative receiver or liquidator) in a separate, clearly identifiable account designated as containing monies owed by the Company.
- (h) If the Customer transfers property in the Goods to a third party by way of a purported sale and following such transfer any of the events outlined in Clause 8(d) above occur (the **Events**), then the Customer hereby acknowledges and agrees that any monies still due for payment by the third party for the Goods at the time of the occurrence of any of the Events are the exclusive property of the Company and the Customer hereby agrees that the Company is entitled to collect such monies directly from the third party. The Customer hereby agrees to immediately provide the Company on request with a written confirmation to that effect. Any monies already paid to the Customer (or its receiver, administrator, administrative receiver or liquidator) shall be held by the Customer (or its receiver, administrator, administrative receiver or liquidator) as fiduciary agent of the Company in a separate account and shall be paid to the Company immediately on demand.

9. Risk

Notwithstanding that property and title in the Goods has not passed under Clause 8 hereof, the risk of loss, damage or destruction to the Goods shall pass to the Customer on delivery.

10. Delivery

- 10.1 Unless otherwise specified, delivery dates, times or periods given by the Company are estimates only and shall not be essential terms of the Contract. Delivery dates, times or periods shall apply as set out in the Company's written order confirmation.
- 10.2 Delivery of the Goods shall take place:-
- (a) in the event that the Company undertakes delivery of the Goods, when the Goods are unloaded from the Company's means of transport at the Site specified by the Customer; or
 - (b) in the event that the Customer undertakes to collect the Goods, when the Goods are loaded onto the Customer's carriage, lorry or other transport at the Company's premises.
- 10.3 Any receipt obtained by the Company from the Customer, or its employee or agent, accepting or taking delivery of the Goods (or such part thereof as is indicated by the receipt) shall be conclusive evidence of delivery in perfect condition by the Company.
- 10.4 The Company may elect to deliver the Goods in instalments and no failure by the Company in respect of any one or more instalments shall entitle the Customer to treat the Contract as a whole as repudiated.
- 10.5 If the Customer fails to take delivery of the Goods (or any part(s) thereof) on the due date, or to give adequate instructions to enable the Goods to be delivered on the due date, the Company may issue a written notice to the Customer stating that risk in the Goods shall be deemed to have passed to the Customer on the date delivery was due. Thereafter the Company shall store the Goods at the Customer's expense but, regardless of whether or not a written notice has been given to the Customer by the Company, the Customer shall indemnify the Company in respect of all losses, costs, claims, damages, and expenses incurred by the Company arising as a result of the Customer's failure.

11. Goods not conform to Contract

- 11.1 The Customer shall be deemed to have examined the Goods upon delivery thereof (time being of the essence) and to have satisfied itself that they conform to Contract. A claim that Goods are not in accordance with the Contract will not be accepted by the Company unless notice in writing, specifying the alleged default and stating what is required of the Company to remedy the alleged default, is received by the Company within 7 (seven) days of delivery of the Goods.
- 11.2 Failure to notify the Company of the non or part-delivery of the Goods within 7 (seven) days of the due date for delivery will release the Company from liability for claims for non-delivery or part delivery.
- 11.3 Any Goods considered to be damaged or defective (together with their packaging materials) shall be retained by the Customer intact as delivered for a period of 14 (fourteen) days from notification of the claim to the Company, within which time the Company or its agents shall have the right to investigate the complaint and examine the Goods and, if possible, to remedy any defect. Any breach of this condition will release the Company from any liability for Goods which are alleged not to conform to Contract.
- 11.4 If the Company agrees with the Customer that the Goods are damaged or defective and that it is not possible to remedy any defect then the Company shall, at its sole option, replace the Goods or credit

the Customer accordingly.

- 11.5 If the Company disagrees with the Customer that the Goods are damaged or defective, or disagrees in relation to how such a defect should be remedied then the dispute shall within 7 days be referred to an independent third party appointed jointly by the Company and the Customer or, failing agreement within 7 days, by a party appointed, on the application of either the Company or the Customer, by the President for the time being of The Institute of Structural Engineers. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne equally by, the Company and the Customer.
- 11.6 The Company shall have no liability to the Customer in respect of damaged or defective Goods (and the Customer shall be required to pay the full contract price) where:-
- (a) any claim made by the Customer is not in accordance with these terms and conditions
 - (b) damage has been sustained after delivery of the Goods to the Customer, or its agents
 - (c) defects are caused by storage, installation, handling, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Goods or by wear and tear, accident or misuse, improper operation or neglect or if any adjustment, alteration or other work has been performed on the Goods by any person other than the Company or its employees or agents
 - (d) a receipt has been obtained by the Company, duly signed by the Customer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition.

12. Limitation of Liability

- 12.1 In all circumstances the Company shall be under no liability:-
- (a) in respect of any defect in the Goods arising from any information, drawing, design or specification supplied by the Customer
 - (b) where any of the circumstances referred to in Clause 11.6(a) to (d) occur
 - (c) to the extent that the total price for the Goods has not been paid by the due date for payment
 - (d) where parts, materials or equipment have not been manufactured by the Company in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer of the goods to the Company
 - (e) for any consequential loss whatsoever and howsoever caused.
- 12.2 The Company's liability howsoever arising shall not in any event exceed the total price for the Goods
- 12.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 12.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and

accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

13. Force Majeure

The Company shall not be liable for any delay, or other failure to perform any part of the Contract, as a result of any factor outside the Company's control, whether an Act of God or otherwise.

14. Notices

Any written notice to be given under the Contract shall be given by way of first class Recorded Delivery post or facsimile or electronic mail transmission or by personal delivery by the party giving it to the other, at his last known business address notified to the other, and shall be deemed to be delivered either 48 hours after posting (in the case of a letter) or within 3 hours after receipt during normal weekday business hours (in the case of facsimile or electronic mail transmission or personal delivery).

15. Indemnity

The Customer shall fully indemnify the Company against all costs, claims, damages and expenses to which the Company may become liable if use of the Goods by the Customer in any way involves an infringement of an intellectual property right enjoyed by a third party.

16. Determination

If the Customer shall make default in, or commit any breach of, any of its obligations to the Company, or if any distress or execution shall be levied upon the Customer, its property or assets or if the Customer shall make or offer to make any arrangement or composition with its creditors or if any petition or receiving order in bankruptcy shall be presented or made against the Customer or, if the Customer is a limited company, any resolution or petition to wind up the Customer's business is passed or presented (otherwise than for reconstruction or amalgamation) or if a receiver is appointed to the Customer's undertaking, property or assets or any part thereof, then the Company shall have the right forthwith to determine any order then subsisting, without prejudice to any other remedies available to the Company, and all sums to be paid to the Company by the Customer shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

17. General

- 17.1 The Company may in its absolute discretion but the Customer shall under no circumstances be entitled to assign or transfer, in whole or in part, the benefit or burden of the Contract without prior written consent.
- 17.2 The rights and remedies of the Company set out in these conditions shall be in addition, and without prejudice, to any other rights and remedies which may be available to the Company at common law or under statute.

18. Invalidity

If any part of these terms and conditions for any reason should be held to be invalid, such invalidity shall not affect the remaining clauses of these terms and conditions.

19. Governing Law

These terms and conditions shall be governed by and construed in accordance with the Law of England and the parties hereto hereby choose and submit to the express and exclusive jurisdiction of the English courts.