

CONDITIONS OF SALE : TERMS OF TRADING

1. Contracts

- (i) All Contracts for the sale and/or manufacture of goods by SCARECROW GROUP LIMITED also trading as SCARECROW AVIATION LIMITED, SCARECROW BIO-ACOUSTIC SYSTEMS LIMITED AND COMMUNICATION TECHNOLOGY (hereinafter called Scarecrow) shall incorporate these Conditions of Sale.
- (ii) Scarecrow shall take the placing of an order by the BUYER as the BUYERS complete acceptance of these Conditions of Sale.
- (iii) Neither the performance in whole or in part of the BUYER's order nor any other conduct whatsoever on the part of Scarecrow shall be constructed as the acceptance by Scarecrow of any Terms inconsistent with these Conditions of Sale. The signing by Scarecrow of the BUYER's documentation shall not imply any modification of these Terms.
- (iv) Neither Scarecrow employees nor agents shall have authority to agree to or accept any variation or addition to any Contract and any variation or addition shall only be binding if confirmed in writing and signed by a Director of Scarecrow.
- (v) All Contracts entered into by Scarecrow shall be governed by English Law and the BUYER submits to the exclusive jurisdiction of the High Court of Justice in England but Scarecrow may enforce any Contract in any court of competent jurisdiction.

2. Credit Accounts

- (i) Unless prior arrangements have been made, all goods are supplied on a pro-forma basis.
- (ii) BUYER's wishing to operate a Credit Account must first provide details of their Banker's with branch and account code numbers together with two trade references using the Scarecrow Credit Application Form available on request.
- (iii) LETTERS OF CREDIT shall be confirmed irrevocable and drawn on Scarecrow's nominated London Bank and payable at sight. All charges relating thereto will be paid by the BUYER. Such BUYERS shall have an alternative payment term of cash with order (against submitted proforma) for which a discount of 3.0% shall apply on the nett goods value.

3. Minimum Order Value

- (i) With the sole exception of product repairs or spare parts, no minimum order value for goods not including carriage will apply.

4. Payment Terms and retention of title

- (i) Where a credit account is operated and unless otherwise agreed in writing a full payment shall be made by the BUYER within 30 days from the date of invoice which is the date of dispatch of the said goods. Property of the goods shall not pass to the BUYER unless and until the whole amount due in respect of such goods shall have been paid to Scarecrow.

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- (ii) In the event of the goods being sold by the BUYER in such manner as to pass to a third party a valid title to the goods shall remain whilst any sums continue due to Scarecrow. Scarecrow rights under the Contract shall attach to the proceeds of such sale or to the claim for such proceeds and the BUYER shall place such proceeds in a separate bank account. Nothing herein shall constitute the BUYER as the agent of Scarecrow for the purposes of any such sub-clause.
- (iii) In the event of the goods becoming constituents of or being converted into other product whilst sums are due as provided in Clause 4 (i) hereof Scarecrow shall have the ownership of and title to such other products as if they were the goods and accordingly Sub-Clause 4 (ii) hereof shall apply as far as appropriate to such other products.
- (iv) If payment is not made to Scarecrow in accordance with the foregoing sub-clause (i) the BUYER shall be liable to pay in addition to the original invoice amount due a service charge of current UK Bank Rate plus 8 per cent compound per 30 days or part thereof overdue upon so much of the original invoice amount that from time to time remains due until full payment shall have been made pursuant to the EU Late Payment Directive 2000/35/EC and to include all reasonable debt recovery costs.
- (v) Where payment for the goods is overdue, Scarecrow or its agent may at any time in normal business hours enter upon any premises owned or occupied by the BUYER for the purpose of taking possession of the said goods or products and removing the same. The BUYER shall afford Scarecrow and its representatives all reasonable facilities (including the inspection of records, bank statements etc.) for the purposes of tracing the said goods or products of the proceeds and the sale thereof.
- (vi) Each of the foregoing sub-clauses shall be construed and take effect independently of each other and if one sub-clause shall be deemed unenforceable the remaining sub-clauses shall remain in full force and effect.

5. Prices

- (i) All prices quoted by Scarecrow are subject to alteration without notice at any time prior to acceptance by Scarecrow of the BUYERs order for the goods quoted.
- ii) Except for those incorrectly delivered goods returned with the prior written consent of Scarecrow for credit returns in as new condition will be credited subject to a surcharge of 15 per cent of the goods value.

6. Taxation

- (i) Where applicable Value Added Tax will be charged at the rate current at the date of shipment which shall be the tax point for the purposes of the Value Added Tax Act 1983.
- (ii) Goods delivered to other EU countries will attract Value Added Tax unless a valid tax reference is supplied by the BUYER.

7. Delivery and Quotation Validity

- (i) Unless otherwise specifically stated all quotations in respect of goods not listed in Scarecrow's current price lists are valid for 30 days from the date of quotation.
- (ii) All dates expressed in acknowledgements of Orders and quotations for shipping or delivery are approximate only and shall not be of the essence of the Contract.
- (iii) Scarecrow will use all reasonable endeavours to effect shipment or delivery within the stipulated period or, if no such period be stipulated, within a reasonable time. Scarecrow

shall be under no liability for any loss or damage to the BUYER or others arising directly or indirectly out of late shipment or late delivery, whether due to Scarecrow's default or not, nor shall such late shipment be deemed to be a breach of contract, nor entitle the buyer to cancel or delay the contract PROVIDED THAT in the event of any failure to deliver the goods within the stipulated period or reasonable time (as above defined) the BUYER shall be entitled to rescind the contract on this account if after the expiry of the stipulated period or a reasonable time (as the case may be) it shall give to Scarecrow written notice of a reasonable revised delivery date by which it requires the goods and Scarecrow fails or is unable to adhere to such revised delivery date.

8. Delivery and Shipping Costs

- (i) All equipment built to the BUYERs specification, and products not listed in Scarecrow's current price lists are quoted EX-WORKS and all costs of special packaging, carriage, handling and insurance shall be for the BUYERs account and invoiced accordingly.
- (ii) Only complete orders will be despatched unless the BUYER confirms otherwise. Where parts of an order are despatched separately at the request of the BUYER, each such part will be separately invoiced and will be liable for carriage charges in accordance with clause 8 (iii) or (iv).
- (iii) In the case of goods to be delivered in the United Kingdom a charge will be made in respect of carriage and/or handling of the goods irrespective of their value.
- (iv) In the case of goods to be delivered outside the United Kingdom:-
 - a) Standard packaging is suitable only for AIR FREIGHT or OVERLAND TRANSIT and a charge will be made in respect of carriage and/or handling of the goods irrespective of their value. Where carriage by SEA is requested the entire cost of suitable packaging and any related documentation shall be for the BUYERs account, goods being EX-WORKS for SEA shipments, irrespective of invoice value.
 - b) Where the nett invoice value of the goods exceeds 15,000 POUNDS STERLING (FIFTEEN THOUSAND POUNDS) on any one invoice the goods will be invoiced and dispatched for air or overland shipment FOB London, freight forward or added to the original relevant invoice.
 - c) Where the nett invoice value of the goods does not exceed 15,000 POUNDS STERLING the goods will be invoiced ex-works and all additional costs of carriage and/or handling and/or insurance shall be for the BUYERs account and invoiced or sent forward accordingly.

9. Delivery / Inspection

- (i) The risk in the goods shall pass to the BUYER when Scarecrow delivers the goods in accordance with the terms hereof to the BUYER or other person to whom Scarecrow has been authorised by the BUYER to deliver the goods whether expressly or by implication. Scarecrow thereafter shall not be liable for the safety of the goods and accordingly the BUYER is advised to insure the goods against such risks as may be commercially prudent.
- (ii) Goods ready for shipment to the BUYER shall be invoiced by Scarecrow notwithstanding any requirement by the BUYER for any test or inspection which shall be carried out at the works of Scarecrow. The satisfactory results of such test or inspection shall be conclusive evidence that the goods comply with the Contract specification in all respects.

- (iii) Scarecrow shall not be liable to replace goods or shortages if:-
 - a) Damage in transit, mis-delivery or quantity discrepancy is not notified in writing within three working days of delivery.
 - b) Non-delivery has not been advised in writing within 10 days of the date of invoice.
- (iv) Upon the BUYER notifying Scarecrow in writing within three days of damage in transit or quantity discrepancy, Scarecrow shall use its best endeavours to replace such goods or to make up any shortage (as the case may be) but otherwise shall be discharged from all liability in respect of such damage or quantity discrepancy.

10. Warranty

- (i) Scarecrow reserves the right in the interests of continued product development to change its product specifications without notice.
- (ii) All repairs are accepted on a RETURN-TO-BASE policy only (unless otherwise stated).
- (iii) If within a period of TWELVE MONTHS (or as otherwise stated at the time of sale) from the date of Scarecrow's invoice in respect of any equipment or component there is found to be in such equipment or component any defect due to defective manufacture or bad workmanship during manufacturing, Scarecrow shall either repair or replace the equipment or component in question at their sole discretion which shall be final.
- (iv) Any equipment or component returned to Scarecrow for repair shall remain at the risk of the BUYER at all times and any equipment or component returned to Scarecrow other than for repair shall remain at the risk of the BUYER until confirmed receipt thereof by Scarecrow.
- (v) Any charges arising in respect of the return of any equipment or component to Scarecrow including costs of insurance packing and transport shall be for the BUYERs account.
- (vi) Scarecrow shall not be liable under its warranty if:-
 - a) Faults or defects are not notified in writing to Scarecrow as soon as practicable after their appearance or discovery.
 - b) The BUYER has without Scarecrow's previous written consent effected modifications or repairs to the goods.
 - c) The faults or defects were caused by accident incorrect or negligent handling disregard of operating instructions overloading unsuitable work faulty erection or any other default by the BUYER its servants or agents.

11. General Liability

- (i) These conditions are in lieu of all conditions warranties or other Terms as to description fitness for purpose conditions merchantability quality or otherwise in respect of the goods or packaging whether expressed in the contract or implied by Common Law custom or statute and notwithstanding that such purpose or conditions may be may become or may have been known to Scarecrow. Apart from Scarecrow's obligation to replace such goods in accordance with the Terms of these Conditions it accepts no liability either for faults or defects in goods or for any loss or damage to the BUYER or others arising directly from any breach of the Terms of the Contract or of the general Law and defects in quality or dimensions shall not be a ground for the cancellation of the Contract or of the balance of the Contract by the BUYER.
- (ii) Without prejudice to the generality of the foregoing Scarecrow shall not be liable:-

- a) For any consequential loss or damage suffered by the BUYER including but without limitation delay loss of production loss of profits loss of or damage to other property or goods and death or injury to persons nor shall it be liable for any loss or damage reasonably capable of being covered by insurance.
- b) For damages in excess of the total price stated in the Contract, even if the BUYER's loss or damage results from a fundamental breach or repudiation and even if further performances of the Contract is frustrated. The BUYER shall also indemnify Scarecrow against all actions, claims or demands by third parties in tort or otherwise arising directly in connection with the goods to the extent that the same exceed the limitation of liability aforesaid.
- c) For any loss or damage to any equipment or components however caused occurring in transit between Scarecrow's works and the BUYER's address or, in the case of goods despatched FOB London under clause 8 (iv) of these conditions occurring after delivery by Scarecrow to the sea or air carrier concerned and without limitation, whether or not such loss or damage was occasioned by the negligence of Scarecrow its employees agents or independent contractors in the preparation handling or packaging or the equipment or component.

12. Arbitration

The BUYER expressly acknowledges and represents that :-

- (i) They are familiar with the provisions of the Misrepresentation Act 1967 and the Unfair Contract Terms Act 1977.
- (ii) That they have read and understood Clause 11 (i) of these Conditions of Sale.
- (iii) That the bargaining positions of the BUYER and Scarecrow are of equal strength.
- (iv) The BUYER agrees not to contend before any court or tribunal or arbitrator that it would be unfair or unreasonable to allow reliance by Scarecrow on the protection of Clause 10 hereof in any dispute arising between Scarecrow and the BUYER.

- 13.** If any dispute, difference or question shall at any time arise between the parties in respect of or in connection with a Contract between the BUYER and Scarecrow the same shall be referred to a single arbitrator or if the parties cannot agree to one, two arbitrators – one to be selected by each party – and an umpire to be selected by the arbitrators and this shall be a submission to arbitration under the provisions of the Arbitration Act of 1950 or any statutory re-enactment modification or extension thereof for the time being in force.

14. Force Majeure

Scarecrow shall not be liable for any delay or failure in carrying out its obligations which is caused wholly or partly by reason of act of god, delay in transportation, labour disputes, fire, flood, war, accident, Government action compliance with any request or application from or requirement by any Government Authority (United Kingdom or otherwise) whether or not having the force of law inability to obtain adequate labour materials, manufacturing facilities or energy nor any other case or reason beyond Scarecrow's control or that of its servants or agents and if the delay or failure has continued for a period of six months then either party may give notice in writing to the other determining the contract and on such determination Scarecrow shall refund to the BUYER any payment which the BUYER has already made on account of the price of the goods or any part thereof after deductions of any amount due to Scarecrow.

15. Patent Infringement

- (i) Scarecrow products are protected by various intellectual property rights belonging to SCARECROW GROUP LIMITED and its subsidiaries and existing under the Laws of the UK and other Countries. These intellectual and property rights may include patent applications, registered designs, unregistered designs, registered trade marks, unregistered trade marks and copyrights, registered copyrights.
- (ii) In the event of any claim being made against the BUYER in respect of infringement or alleged infringement of letters patent, registered design or similar rights relating to goods to Scarecrow's design supplied to the BUYER, the BUYER shall notify Scarecrow immediately and Scarecrow shall be at liberty with the BUYER's assistance if required but at Scarecrow's expense to conduct all negotiations in the BUYER's name for the settlement of the same or any litigation that may arise there from. Subject to such notification and provided that no such goods or any part thereof shall be used for any purpose other than that for which Scarecrow supply them Scarecrow shall indemnify the BUYER in respect of any sum which the BUYER may be lawfully required to pay or shall pay with Scarecrow's consent to any such claimant but this indemnity shall not extend so as to entitle the BUYER to recover from Scarecrow any sum exceeding the total Contract price.
- (iii) Where the goods are at the BUYER's request made and supplied by Scarecrow other than to its own design Scarecrow accept no responsibility for infringements or alleged infringements or any letters patent, registered design or similar rights in respect thereof and the BUYER shall indemnify Scarecrow against any such claims.
- (iv) As far as concerns goods supplied other than of Scarecrow's own manufacture the BUYER will be entitled only to such indemnity in respect of infringements or alleged infringements of letters patent registered design or similar right as Scarecrow may receive from its suppliers provided that Scarecrow is not called upon to bear any liability or expense greater than the amount recoverable from its supplier.
- (v) The bird control products of Scarecrow contain digitally encoded, therefore easily identified, licensed recordings of Scarecrow processed bird species distress calls. These are Copyright protected and action will be taken against any person or business copying these whether for private or further commercial use. The purchase and/or ownership of any product of Scarecrow containing these Copyright recording is taken as acceptance of this Copyright and that due care and attention will be taken in its protection.

16. Disclaimer

Whilst the unique efficiency of bio-acoustic products manufactured by Scarecrow is long established SCARECROW GROUP LIMITED stress that they can only work effectively as part of an overall and planned programme of bird control; working effectively as part of an overall plan however does not constitute a 100% guarantee of dispersal success given the target birds are wild animals. This will include total hygiene management and where applicable the use of operative who have been professionally trained. Without limitation, Scarecrow will not accept liability for any consequences as a result of poor equipment maintenance, misuse, inappropriate use, lack of operative training, failure of due diligence or through lack of prior consultation, or lack of information provided during any system design process.

17. SOFTWARE OPERATING TERMS & CONDITIONS

The products of Scarecrow incorporate Software (the software applications, utilities and modules embedded within the Products) which is owned by Scarecrow. BUYERS of such equipment shall note the License conditions detailed below.

License Grant Conditions and Restrictions

1. Scarecrow grants the BUYER a non-exclusive, world-wide non-transferable, Royalty-free, licence to use the Software as described.
2. The BUYER must ensure that the copyright, trademark and other protective notices contained in the Software are maintained and not altered or removed.
3. The Software provided is copyright and licensed not sold and Scarecrow especially does not transfer title or any ownership rights in the Software.
4. It is illegal to:
 - Use the Software in conjunction with any other Product.
 - Copy all or part of the Software.
 - Incorporate all or any part of the Software into other programmes.
 - Reverse-engineer, decompile or disassemble the Software
 - Pass on to others the Software by any commercial means or transaction.

Termination

This licence is effective until terminated. This will terminate automatically without Notice on proven failure to comply with any of its provisions.

Disclaimer

1. The Software is to the extent permitted by Law supplied 'as is' and Scarecrow expressly exclude all warranties, express or implied, including but not limited to warranties of satisfactory quality, fitness for purpose and non-infringement save to the extent that the same are not capable of exclusion at Law.
2. In no circumstances will Scarecrow be liable for any direct, indirect, consequential, or incidental damage including loss of profits, business interruption, loss of data or the cost of procurement of substitute goods technology or services arising out of the use or the inability to use the Software.

General

1. This End-User Licence will be governed by the Laws of England.
2. The above Terms and Conditions supersede any prior agreement oral or written with Scarecrow relating to the Software.