

**1. INTERPRETATION**

1.1 In these Conditions the following words have the following meanings:

"the Buyer" the person(s), firm or company that purchases the Goods from the Company;  
 "the Company" NetPilot Internet Security Limited;  
 "Contract" any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;  
 "Goods" any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions headings are for convenience only and do not affect the construction of these Conditions.

**2. APPLICATION OF TERMS**

2.1 The Contract shall be on these Conditions to the exclusion of all other terms and conditions including, without limitation, any terms or conditions which the Buyer purports to apply under (or which accompany or are referred to in) any purchase order, confirmation of order, specification or other document. Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.2 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company.

2.3 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate. No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.4 Any quotation is given on the basis that no contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

**3. DELIVERY**

3.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Company's place of business or place of manufacture in the United Kingdom, as the case may be, when the Goods are delivered by the Company to a carrier nominated either by the Buyer or by the Company on behalf of the Buyer.

3.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

3.3 Subject to the other provisions of these Conditions the Company shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

3.4 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, or the Company agrees in writing to store the Goods for any period:

3.4.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence) and the Buyer agrees that it shall be responsible for insuring the Goods;

3.4.2 the Goods shall be deemed to have been delivered to the Buyer; and

3.4.3 the Company may store the Goods and the Buyer shall be liable for all related costs and expenses.

**4. NON-DELIVERY**

The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

**5. RISK AND TITLE**

5.1 The Goods are at the risk of the Buyer from the time of delivery. The Company reserves the right to part-deliver any consignment of Goods, in which case risk in the part delivered shall pass to the Buyer when delivered.

5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

5.2.1 the Goods; and

5.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

5.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

5.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

5.3.2 not destroy, deface or obscure any serial numbers, identifying marks or packaging on or relating to the Goods;

5.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

5.4.1 any sale shall be made in the ordinary course of the Buyer's business at full market value; and

5.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

5.5 The Buyer's right to possession of the Goods shall terminate immediately if:

5.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part of it, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

5.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

5.5.3 the Buyer encumbers or in any way charges any of the Goods.

5.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

5.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or, where the Buyer's right to possession has terminated, to recover them.

**6. PRICE**

6.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

6.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

**7. PAYMENT**

7.1 The Company may issue an invoice for the Goods on or after the date of delivery. Unless otherwise agreed in writing, payment for the Goods is due within 30 days of the date of delivery.

7.2 Time for payment shall be of the essence and no payment shall be deemed to have been received until the Company has received cleared funds. All payments under the Contract shall become due immediately on termination of this Contract. The Buyer shall make all payments due under the Contract without any deduction by way of set-off or counterclaim.

7.3 If the Buyer fails to pay the Company any sum due under the Contract the Buyer shall be liable to pay interest to the Company from the due date for payment at the annual rate of 3% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. Alternatively and where appropriate, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

**8. QUALITY**

8.1 The Company warrants that the Goods shall upon delivery, and for a period of 12 months afterwards, comply with their published specification ("the Warranty").

8.2 The Company shall not be liable for a breach of the Warranty unless the Company is given a reasonable opportunity of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there. If in the reasonable opinion of the Company the warranty claim is valid, the Company will pay for carriage of any repaired or replacement Goods to the Buyer. If in the reasonable opinion of the Company the warranty claim is not valid, the Company reserves the right to make a reasonable charge for its time spent examining the Goods.

8.3 The Company shall not be liable for a breach of the Warranty if:

8.3.1 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

8.3.2 the Buyer alters or repairs such Goods without the written consent of the Company.

8.4 Subject to conditions 8.2 and 8.3 if any of the Goods do not comply with the Warranty the Company shall at its option repair or replace such Goods (or the defective part).

8.5 If the Company complies with condition 8.4 it shall have no further liability for a breach of the Warranty in respect of such Goods.

8.6 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.

**9. LIMITATION OF LIABILITY**

9.1 Subject to condition 8, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

9.1.1 any breach of these Conditions; and

9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

**THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 9.4**

9.4 Subject to conditions 9.2 and 9.3:

9.4.1 the Company's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to £25,000.

9.4.2 subject to condition 9.4.1, the Company shall be liable to the Customer in respect of all direct loss or damage caused by the acts or omissions of the Company, its employees, agents or sub-contractors, other than Excluded Loss. In this condition 9.4.2 the expression "Excluded Loss" means all special loss (whether or not the possibility of such loss arising on a particular breach of contract or duty has been brought to the attention of the Company at the time of making the Contract) and all third party claims, economic loss or other loss of business, production, revenue, profit, goodwill or anticipated savings and loss of data, whether arising in contract, tort, negligence, breach of statutory duty or otherwise.

9.5 For the avoidance of doubt, in no event shall either party be liable to the other for any indirect or consequential loss of any nature and howsoever caused.

9.6 The Buyer acknowledges that the prices charged by the Company for the Goods have been calculated on the basis that the Company may rely upon the exclusions and limitations of liability set out in this clause.

**10. FORCE MAJEURE**

Neither party shall be liable to the other for any delay or default in the performance of its obligations due to any cause or circumstance beyond its reasonable control, including but not limited to any industrial dispute.

**11. GENERAL**

11.1 The Buyer shall indemnify the Company (including, without limitation, in respect of any claim brought by any of the Company's employees, representatives and other agents) against all liabilities and expenses (including reasonable legal costs) arising whether directly or indirectly from the Buyer's breach of contract, tort (including negligence), breach of statutory duty or other act or omission relating to the Contract or the Buyer's sale or use of the Goods.

11.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

11.3 The Contract records the entire agreement between the parties in relation to its subject matter. Each party confirms that it has not relied upon any representation not recorded in the Contract inducing it to enter into the Contract, provided always that nothing in the Contract shall exclude any liability of either party for pre-contractual statements or representations made fraudulently.

11.4 Failure or delay by the Company in enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract, and any waiver by the Company of any breach of any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach.

11.5 A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

11.6 All aspects of the Contract and these Conditions shall be governed by English law and the parties irrevocably submit to the non-exclusive jurisdiction of the English courts.

**12. COMMUNICATION**

12.1 The Buyer or any agent of the buyer, shall acknowledge the right of the Company to communicate at the Company's discretion for any reason of its choosing, with any third-party utilising or reselling product manufactured by the Company. Communication shall include, but is not limited to, electronic and postal communication.

**13. CONFORMANCE TO SOFTWARE LICENSING**

13.1 The Buyer or any agent of the buyer, shall take all reasonable steps to ensure that any third-party utilising or reselling product manufactured by the Company, adheres to all relevant software license provisions and makes appropriate payment to the Company for use of such software as defined by the Company's current official price list.

13.1 The Buyer or any agent of the buyer shall take all reasonable steps to ensure that any third-party utilising or reselling product manufactured by the Company undertakes to remove from use any software for which the relevant licenses have expired.