

TERMS OF SALE

1 Definitions

1.1 In these Conditions:

“FAV” means Focus Audio Visual Limited; “the Buyer” means the person whose order is accepted by FAV; “Contract” means the contract for the purchase and sale of hardware and/or software and/or services incorporating these Conditions.

1.2 Headings are for convenience and do not affect interpretation.

2 Basis of Sale

2.1 FAV will sell and the Buyer will purchase the hardware and/or the software and/or the services in accordance with any written order of the Buyer which is accepted by FAV, subject in either case to these Conditions.

2.2 These Conditions govern the Contract to the exclusion of any other terms and conditions (if any) contained on or referred to in an order form or other communication from the Buyer. No addition, variation or substitution of these Conditions will bind FAV or form part of any order unless agreed in writing and signed by authorised representatives of both parties.

2.3 These Conditions and the terms of any order constitute the entire understanding of the parties and supersede all prior promises, representations and undertakings.

2.4 No FAV employee or agent is authorised to make any representations concerning the subject matter of the Contract unless confirmed by FAV in writing. The Buyer acknowledges that it is not relying on any such representation not so confirmed.

3 Orders

3.1 Any order placed with FAV will be accepted at FAV’s sole discretion and, if accepted, will only be accepted on and subject to these Conditions.

3.2 Each order accepted constitutes a separate legally binding Contract between FAV and the Buyer.

3.3 The Buyer is responsible for ensuring the accuracy of any order submitted by the Buyer.

3.4 Upon written notice to the buyer FAV reserves the right to modify any hardware and/or software ordered, which are required to conform to any applicable safety or statutory requirements, or which do not materially affect their quality or performance.

3.5 Once accepted by FAV, no order may be cancelled by the Buyer without FAV’S express prior written agreement.

4 Prices

4.1 Orders are accepted at the price given at the date of order.

4.2 Unless otherwise stated, quotations are valid for acceptance for 30 days or earlier acceptance, after which they will lapse. Any quotation that has lapsed must be reconfirmed with FAV prior to an order being accepted.

4.3 FAV reserves the right, by giving the Buyer written notice at any time before delivery, to increase the price of hardware and/or software to reflect any increase in the cost to FAV which is due to any factor



beyond FAV'S control. Where possible, FAV will provide 30 days' notice of any price changes but the Buyer acknowledges this may not always be possible where prices vary for reasons outside of FAV'S control. FAV therefore reserves the right to vary prices at short, or even no, notice. Any price changes will be notified to the Buyer as soon as reasonably possible. Should FAV provide the buyer with written notice of any such price change, the buyer may elect to cancel the order without any further obligation.

4.4 All prices are exclusive of VAT and any other sales taxes, unless otherwise stated. Any overseas duties and taxes will be the responsibility of the Buyer.

5 Payment

5.1 If credit terms have been previously agreed payment will be made by the Buyer within 30 days of delivery or of receipt of invoice, if earlier. If no payment terms have been agreed payment shall be received in full prior to the transfer of hardware/software or services.

5.2 If a discount is given, VAT is calculated on the discounted price.

5.3 Compound Interest on overdue invoices will be payable by the Buyer, before as well as after judgment, on a daily basis at an annual rate of 3% above Lloyds Bank Plc base lending rate from time to time.

5.4 The Buyer is not entitled to withhold or delay any payment due by reason of any actual or alleged defect, whether or not such defect is the subject of any claim.

5.5 The Buyer is responsible for any bank or other charges (including, but not exclusively, transfer charges, costs of cheques not being honoured etc.).

5.6 If:

5.6.1 any sum owed by the Buyer to FAV or any other associated company, under this or any other contract is overdue; or

5.6.2 at any time the credit standing of the Buyer has in FAV'S reasonable opinion been impaired for any reason; or

5.6.3 the Buyer fails to make any payment when it becomes due; or

5.6.4 the Buyer makes any voluntary composition or arrangement with its creditors; or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or if a resolution for the winding up of the Buyer is passed or a court makes an order to that effect; or if there is any breach by the Buyer of these Conditions; or the Buyer ceases to carry on business;

then FAV may, without prejudice to its other rights and remedies and at its option, be entitled to cancel the Contract or withhold any further deliveries and/or suspend the provision of further services without liability to the Buyer until arrangements as to payment or credit have been established to FAV's reasonable satisfaction.

6 Delivery

6.1 Delivery is the responsibility of FAV. The buyer accepts no responsibility for any loss or damage in transit. Any such loss or damage must be notified to FAV and the courier, in writing within 48 hours. The buyer must inspect the delivery at the time of delivery and formally agree the condition of all goods prior to installation

6.2 Delivery dates are given in good faith but are business estimates only and are not guaranteed. FAV is not liable for any loss or damage suffered by the Buyer as a result of FAV'S reasonable failure to comply with such delivery times.



- 6.3 The Buyer's refusal to accept delivery (either part or whole) shall permit FAV to treat the Contract as repudiated by the Buyer and to decline to make any further deliveries, without prejudice to FAV'S right to recover damages for breach of contract.
- 6.4 FAV reserves the right to make deliveries in instalments. If the Buyer refuses or fails to accept any delivery, FAV reserves the right to invoice the Buyer in respect of the balance remaining undelivered, with payment becoming due immediately, and FAV shall be entitled to charge reasonable storage costs to the Buyer, the hardware and/or software being held at the Buyer's risk.
- 6.5 FAV may agree, for a separate charge, to provide certain advice and/or consultancy services at the premises of the Buyer or elsewhere. Such services shall be subject to obtaining full information from the Buyer as to its specific requirements and strictly limited to advice regarding FAV'S own product range. If it does, then the Buyer shall indemnify FAV against any loss, damage or injury caused to FAV'S employees, agents or contractors during or as a result of or in connection with the provision of such services.

7 Title and Risk

- 7.1 Property in the hardware shall only pass to the Buyer on receipt by FAV in cash or cleared funds payment in full of the price of that hardware.
- 7.2 Property in any software shall, at all times, remain vested in FAV or its licensor, and the Buyer's rights shall be governed by the terms of any licence relating to such software, provided such terms are notified to the buyer.
- 7.3 Risk in the hardware and/or software shall pass to the Buyer:
- 7.3.1 if delivered by FAV to a place nominated by the Buyer, when tendered for delivery at that place; or
- 7.3.2 if to be collected by the Buyer (or its agent), when loaded onto the Buyer's (or its agent's) vehicle, or at such time as they are available for so loading and would have been loaded but for the Buyer's (or its agent's) failure to collect them; or
- and the Buyer is responsible for insuring the hardware and software from any such time.
- 7.4 Until such time as property in the hardware passes to the Buyer:
- 7.4.1 The Buyer shall hold the hardware as FAV'S fiduciary agent and bailer, and shall keep all such items separate and distinct from those of the Buyer and third parties, and separately stored, protected and adequately insured, and identified as FAV'S property. Until such time, the Buyer shall be entitled to resell or use such items in the ordinary course of its business, but shall account to FAV for the proceeds of sale or otherwise of such items, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate and distinct from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and adequately insured; and
- 7.4.2 Provided that the hardware is still in existence and has not been resold, FAV shall be entitled at any time to require the Buyer to deliver up the hardware to FAV.
- The Buyer will indemnify FAV for any loss or degradation of or damage to any hardware caused whilst such hardware is in the possession or under the control of the Buyer.
- 7.5 Any hardware and/or software supplied to the Buyer which is subject to any restrictions or provisions imposed by the manufacturer's and/or licensor's conditions are supplied to the Buyer by FAV subject to any such conditions and on the terms of any applicable licence agreement, provided any such restrictions or conditions are notified to the buyer.
- 7.6 The Buyer is not entitled to pledge or in any way charge by way of security for any indebtedness any hardware and/or software which remain the property of FAV (or its licensor) but, if the Buyer does so, all moneys owing by the Buyer to FAV shall (without prejudice to FAV'S other rights and remedies) become immediately due and payable.

8 Warranties



- 8.1 All hardware and/or software are supplied on and subject to the terms and conditions of warranties and licences of the original manufacturers and/or licensors. FAV will pass on to the Buyer the benefit of any guarantees or indemnities given to it by its supplier, all of which will be notified to the buyer. Any software supplied is not warranted to operate error-free or on an uninterrupted basis.
- 8.2 FAV makes no warranty as to the description, quality, fitness for purpose, suitability or otherwise of any hardware and/or software supplied. FAV accepts no responsibility for any loss or damage, arising directly or indirectly, from the use of any hardware and/or software supplied by it, including any loss arising by reason of any failure of the hardware and/or software to comply with any specifications provided by the Buyer.
- 8.3 Except as otherwise expressly provided, and except where the Buyer deals 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.
- 8.4 Where the hardware and/or software are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

9 Defects

- 9.1 FAV reserves the right, at its sole discretion (acting reasonably), to determine whether any hardware and/or software is defective. Defective hardware and/or software will, at FAV'S option, be replaced or rectified by FAV. If this is not practicable, FAV will credit the value of the hardware and/or software at the original invoiced price. Any claim for defective hardware and/or software must be made in writing with a FAV RMA form within 7 days of delivery. The Buyer will have no claim in respect of any breach of warranty that should have been apparent on a reasonable visual examination of the hardware and/or software supplied. All associated transport charges for delivery to FAV are the responsibility of the Buyer. The Buyer is not entitled to terminate the Contract as a result of any defects discovered in any delivery.
- 9.2 Returns may only be made with a FAV Returns form and where a valid returns authorisation number has been issued by FAV. This number must be displayed on the outside of any packaging and the returns form and FAV will not accept delivery of any hardware and/or software returned without this. The terms governing any loan unit (if any) supplied by FAV are as set out on the returns form.

10 Limitation of Liability

- 10.1 Except in respect of death or personal injury caused by FAV's negligence (for which there shall be no limit on liability):
- 10.1.1 FAV is not liable to the Buyer by reason of any representation, implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, consequential or special loss or damage (including but not limited to loss of profit, business opportunity, contracts or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of FAV, its employees or agents or otherwise) arising out of or in connection with the supply of the hardware and/or software; or their use or resale by the Buyer; or the supply of any advice and/or consultancy services by FAV; or otherwise.
- 10.2 Except as may otherwise be expressly provided, FAV'S liability arising under or in connection with this Contract, whether arising in contract, tort (including negligence) or otherwise shall not under any circumstances, save as set out in clause 10.1, exceed the aggregate price payable by the Buyer under this Contract. If the Buyer does not consider that this limit is sufficient to protect its interests, the Buyer should contact FAV and FAV will be pleased to discuss with the Buyer whether it is able to amend this limit. The Buyer accepts that FAV shall be entitled to charge the Buyer, and the Buyer shall pay, an additional fee for accepting any different limit if FAV agrees to do so.

11 Force Majeure

- 11.1 FAV shall not be liable for any loss or damage caused by delay in performance or non-performance of any of its obligations under any contract where the same is caused by any event beyond FAV's control



including but not limited to an act of God, war, riots, insurrection, governmental or parliamentary prohibitions or enactments, import or export regulations, fires, flood, casualty, epidemic, strikes, lock-outs, cessation of labour, trade disputes, destruction or shut-down of production facilities, shortage or curtailment, delay or disruption in transportation, difficulties in obtaining labour or materials, breakdowns or accidents, financial requirements or manufacturing limitation imposed by third-party manufacturers, suppliers or vendors. Should any such event occur, either party may cancel or suspend this Contract without incurring any liability for any loss or damage caused thereby, and the parties shall be entitled to recover all monies owing to them in respect of deliveries made or services performed prior to any such failure.

12 General

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by either party of any breach of the Contract by the other party shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 12.4 This Contract is governed by and construed in accordance with the laws of England and Wales, and the parties submit the resolution of any dispute to the exclusive jurisdiction of the courts of England and Wales.