

# > Conditions of Sale

## > TERMS AND CONDITIONS

The following terms and conditions apply without exception to all sales by KAC Alarm Company Ltd ("Seller").

1. **SOLE TERMS.** No term or condition on Buyer's purchase order or any other instrument, agreement or understanding (unless expressly agreed to on the face of Seller's quotation and/ or acknowledgment) shall be binding upon Seller unless agreed to in writing.

2. **QUOTE/ PRICES.** Seller's quotation, if constituting the reverse side of this document, is firm only if Buyer enters an order within the time specified on the quote or, if none be mentioned, thirty (30) days. Buyer must request shipment of the entire quantity of goods ordered within twelve (12) months from date of order. Otherwise, Seller standard prices at time of shipment shall apply to those quantities actually delivered, even if already invoiced. All quotations for special products are based on Buyer accepting over-runs and under-runs not exceeding 5% of the quantity ordered and Buyer agrees to pay or receive the relevant pro-rata adjustment.

3. **ERRORS.** All stenographic and clerical errors are subject to correction, but otherwise Seller's powers to vary price hereunder shall be governed by the BEAMA Code of Practice and Formulae.

4. **PAYMENT.** Unless otherwise stated on the face hereof, all payments are due within thirty (30) days from date of invoice. On all goods for destination outside the United Kingdom and the Republic of Ireland terms of payment are net cash by irrevocable letter of credit or sight draft with documents attached. All payments shall be made in the currency of the United Kingdom or if appropriate of the Republic of Ireland. If Buyer delays in making payment to Seller, Seller shall be entitled to interest on the amount due from the time fixed for payment as above until the date of receipt, at the rate of 2% per month.

5. **DELIVERY AND RISK OF LOSS.** Shipments shall be F.O.B. Seller's facility unless otherwise noted, with all risk of loss or damage to goods passing to Buyer upon delivery to carrier. Property in the goods shall pass to Buyer when it has paid the full contract price for the goods.

6. **SHORTAGES.** Any claim for shortage or any other cause must be reported to Seller within thirty (30) days after receipt of product.

7. **TAXES.** The amount of any and all applicable taxes shall be added to the price and paid by Buyer, in lieu thereof, Buyer may furnish Seller with exemption certificates acceptable to the taxing authorities.

8. **FORCE MAJEURE.** Seller shall not be liable for any delay in production or delivery of goods if such is due to an event outside its reasonable control ("force majeure"), which shall include among other things, failure by suppliers to provide Seller parts, services, manuals, or other information necessary to the performance by Seller, any acts of any government that would limit the ability for contract performance (including refusal to grant, or suspension of, an export licence), fire, earthquake, flood, or any other acts of God; labor strikes or lockouts; riots, civil disobedience, terrorism or war (or imminent threat of same, and material or component shortage). If the force majeure continues for longer than 90 days, either party may terminate a purchase order and Buyer will pay Seller for work performed prior to termination and reimburse all reasonable expenses incurred by Seller as a result of such termination. If delays in delivery or performance are caused by force majeure or Buyer, the date of delivery or performance shall be extended by the period of the delay or as mutually agreed. If Seller should default or delay or not deliver product for any other reason, Buyer's sole remedy against Seller shall be an option to cancel its purchase order, through written notice to Seller.

9. **TERMINATION.** Except as may be specified differently on the face hereof, Buyer may for any reason terminate an order in whole or in part as provided in this section 9, upon written notice to Seller, which shall be no less than sixty (60) days or the standard product lead time (whichever is shorter) in advance of requested delivery date. Product scheduled for shipment within thirty (30) days cannot be rescheduled or cancelled. Product scheduled for shipment between thirty (30) and sixty (60) days may be rescheduled. If, however, product within the 30-60 day window is rescheduled beyond sixty (60) days, that quantity is then non-cancelable. Buyer shall, nonetheless, be liable for termination charges, which shall include (1) a price adjustment based on quantity of goods delivered, (2) all costs, direct and indirect, incurred and committed for Buyer's canceled order, (3) the full cost of all unique materials required for custom products, and (4) a reasonable allowance for prorated expenses and anticipated profits consistent with industry standards.

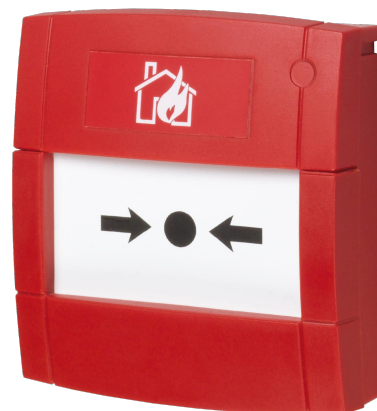
10. **INFRINGEMENT INDEMNIFICATION.** Seller agrees to defend or settle any claim, suit, or proceeding brought against Buyer based upon a claim that any product manufactured and provided by Seller hereunder directly infringes any third party patent, copyright, or maskwork and to pay costs and damages finally awarded to the third party, provided that: Seller is notified promptly in writing of such claim; Seller is provided sole control of such defense or settlement using counsel of Seller's choice; and Buyer provides Seller with all available information and assistance. Seller shall not be responsible for any settlement or compromise of such claim made without Seller's written consent.

Seller shall have no such obligation in respect of claims arising: (a) from products not in Seller's catalog or products developed pursuant to Buyer's direction, design, or specification; (b) from products developed by Seller using any process required by Buyer; (c) from the combination of any product with other elements if such infringement would have been avoided by the product not in such combination; or (d) from products that have been modified if such infringement would have been avoided by the unmodified product. Buyer agrees to defend, indemnify, and hold harmless Seller from and against any claims, suits, or proceedings whatsoever arising from such exclusions identified in (a)-(d) above.

At any time after such a claim has been made or Seller believes is likely to be made, or a court of competent jurisdiction enters an injunction from which no appeal can be taken, Seller will have at its option the discretion to: (a) procure for Buyer the right to continue using such Product; (b) replace or modify such Product; or (c) accept the Product's return and refund the purchase price less twenty percent (20%) annual depreciation from shipment date. In no event shall Seller be liable for any consequential, incidental, special, or punitive damages. The foregoing states Seller's entire liability and Buyer's exclusive remedy for any actual or alleged infringement of third party rights. This article is in lieu of and replaces any other expressed, implied, or statutory warranty against infringement.

### 11. SOFTWARE

a) Software, if listed on the face hereof, is hereby licensed and not sold. The license is nonexclusive, and is limited to such equipment and/ or location(s) as are specified on the purchase order for which this instrument serves as either a quotation or acknowledgment. No other use is permitted b) Seller retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes without limitation all rights in patents, copyrights, trademarks and trade secrets. Buyer shall not attempt any sale, transfer, sublicense, reverse compilation or disassembly or redistribution of the software. Nor shall Buyer copy, disclose or display any such software, or otherwise make it available to others (except as Seller authorizes in writing).



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## > Conditions of Sale (continued)



12. **WARRANTY.** The following is in lieu of all other warranties and conditions, express or implied (other than the terms implied by section 12 of the Sale of Goods Act 1979), including those of satisfactory quality and fitness for particular purpose. Seller does not represent or warrant that any goods may not be compromised or circumvented or that goods will prevent any personal injury or property loss by fire or otherwise.

a) **Goods/ Hardware**

Except as otherwise hereinafter provided, Seller warrants goods of its manufacture to be free of defective materials and faulty workmanship and as conforming to applicable specifications and/ or drawings. Commencing with date of manufacture, Seller's warranty shall run for the period specified on the face hereof or, if none be mentioned, 36 months. Non-complying goods returned transportation prepaid to Seller will be repaired or replaced, at Seller's option, and return-shipped lowest cost, transportation prepaid. No goods will be accepted for return without an authorization number obtained in advance of shipment from Seller. Items subject to wear or burnout through usage shall not be deemed defective because of wear or burnout, nor will they be deemed defective if they are improperly used or if they are combined or used with any incompatible control and indicating equipment or ancillary products that may be connected to the goods. Seller reserves the right to charge its regular charges if inspection does not disclose a defect within the terms of this warranty. Repaired, replaced or recalibrated equipment shall be warranted for the remainder of the unused warranty term or for 90 days from shipment, whichever is longer. Experimental devices (identified as experimental by Seller by part number or otherwise) are prototype, pre-production items that have yet to complete all phases of product-release testing; these items are sold "AS IS" WITH NO WARRANTY. All illustrations, drawings and other particulars supplied are as accurate as possible, but none of these form part of the contract between the parties.

b) **Software**

Software, if listed on the face hereof and used within hardware and/ or a system warranted by Seller, will be furnished on a medium that's free of defect in materials or workmanship under normal use for so long as the hardware and/ or system is under warranty. During this period, Seller will replace without charge any such medium it finds defective. As for the quality or performance of any software or data, they are supplied "AS IS" WITH NO WARRANTY.

c) **Installation**

Where hardware and/ or a system is installed by Seller, such installation is warranted against faulty workmanship for the same period (if any) as applies to the installed items. During this concurrently running period, Seller will correct without charge any workmanship it finds to be faulty.

d) If Seller supplies Products not manufactured by it (i.e. not identified by Seller's part number) such products will carry only such warranty as is provided by the actual manufacturer of such Product..

13. **LIMITATION OF LIABILITY.** In no event shall either party be liable for (a) any indirect, incidental, consequential loss; (b) any loss arising from business interruption; (c) loss of profits; (d) loss of revenue; (e) loss of use of any property or capital; (f) loss of anticipated savings; or (g) loss of data. Neither party shall be liable for any loss or damage where that liability arises as a result of their knowledge (whether actual or otherwise) of the possibility of any such loss or damage. Seller's liability in respect of any order or otherwise under these terms and conditions shall in no case exceed the sales price of the relevant order. These exclusions and limitations on damages shall apply regardless of how the loss or damage may be caused and against any theory of liability, whether based in contract, tort, or otherwise.

Neither party seeks to exclude or restrict its liability for: (a) death or personal injury resulting from negligence; (b) fraud; (c) the terms implied by section 12, Sale of Goods Act 1979; or (d) any matter in respect of which, by law, it is not permitted to restrict its liability.

The Buyer shall indemnify Seller against any claims, damages, losses, costs and expenses incurred by Seller as a result of claims made against Seller by third parties arising out of the combination or use of any goods with any incompatible control and indicating equipment or ancillary products that may be connected to them.

14. **COMPLIANCE WITH LAWS.** Seller represents that all goods and services delivered hereunder will be produced and supplied in compliance with all applicable laws and regulations in the United Kingdom and the Republic of Ireland. Buyer confirms that it will ensure that all Products are properly installed and used in accordance with the Health and Safety at Work Act 1974, and Buyer will indemnify Seller in respect of any costs, claims, actions or liability arising out of that Act, or otherwise arising out of the supply by Buyer or use by others of the Products. Buyer shall return all radioactive and ionization sources to Seller for disposal, in accordance with Seller's requirements which Seller shall notify to Buyer on request.

Should the provisions of the WEEE Directive 2002/96/EC as implemented in any local jurisdiction apply to the Seller's Goods, the financing and organisation of the disposal of the waste electrical and electronic equipment are the responsibility of the Buyer who accepts this responsibility. The Buyer will handle the collection, processing and recycling of the equipment in accordance with all applicable laws and regulations, and shall pass on this obligation to the final user of the Goods. Failure by the Buyer to comply with these obligations may lead to the application of criminal sanctions in accordance with local laws and regulations.

15. **EXPORT CONTROL.** Buyer/ Licensee shall comply with all applicable export control laws and regulations of the United States and any other country having proper jurisdiction and shall obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all product, technology and software purchased, licensed, and received from Seller.

16. **PRECLUSION AGAINST SETOFF.** Buyer is prohibited from and shall not set off invoiced amounts or any portion thereof against sums that are due or may become due from Seller to Buyer, its parent, affiliates, subsidiaries or other divisions or units on separate transactions.

17. **APPLICABLE LAW.** The construction or validity and performance of these terms and conditions shall be governed by the laws of England.

18. **MISCELLANEOUS.** These terms and conditions (including those stated on the face hereof) shall constitute the entire agreement of Seller and Buyer, superseding all prior agreements or understandings, written or oral, and cannot be amended except by mutual writing. Buyer may not assign any rights or duties hereunder without Seller's written prior consent. No representation, warranty, course of dealing or trade usage not contained or referenced herein will be binding on Seller. No failure by Seller to enforce at any time for any period the provisions hereof shall be construed as a waiver of such provision or of the right of Seller to enforce thereafter each and every provision. Provisions herein which by their very nature are intended to survive termination, cancellation or completion of customer's order after acceptance by Seller shall survive such termination, cancellation or completion. These terms and conditions shall confer no benefit on any third party or the right to enforce any term or condition under the Contracts (Rights of Third Parties) Act 1999.

Effective May 2006

# KAC

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