



**Specialists in the source and supply of IT hardware.**

## **AFINITEK LIMITED (LTD) Standard Terms and Conditions**

### **1 INTERPRETATION**

**1.1** In these conditions of sale the following words will (unless the context otherwise requires) have the following meanings:

“Conditions” means the conditions set out below and in the Order Acknowledgement. Where any terms below conflict with any terms in the Order Acknowledgement the terms in the Order Acknowledgement will take precedence.

“Contract” means any contract between Afinitек Ltd and the Customer for the sale of any Works.

“Customer” means the company, firm, body or person purchasing the Works.

“Customer’s Property” means any Goods returned by the Customer to Afinitек Ltd (which are found to be NDF under clause 8.8 or any specifications, drawings, designs, packaging, equipment, goods, materials, instructions, approvals or information supplied by or on behalf of the Customer to Afinitек Ltd in connection with the Works.

“Goods” means any goods or materials which Afinitек Ltd agrees to provide to the Customer.

“IPR” means all Confidential Information, patents, trade marks and service marks, rights in designs, trade or business names, copyright (including rights in computer software), database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

“Order Acknowledgement” means the written acknowledgement of and acceptance by Afinitек Ltd of the Customers request to purchase any Works.

“Services” means any work and/or services which Afinitек Ltd agrees to provide to the Customer.

“Works” means Goods and/or Services (as appropriate).

**1.2** The words “agreed in writing” will mean expressly agreed in writing and signed by a director of Afinitек Ltd

**1.3** The headings are for reference only and will not affect the interpretation of these Conditions.

**1.4** Afinitек Ltd reserves the right at anytime without liability to correct any clerical, typographical or other similar errors or omissions made by its employees.

**call 0845 1777 000 or visit [www.afinitek.com](http://www.afinitek.com)**



## 2 QUOTATIONS

**2.1** Any quotation (whether written or oral) is given on the basis that no contract will come into existence other than in accordance with the provisions of clauses 3.5 and 3.6.

**2.2** Unless otherwise agreed in writing any quotation is valid only for a period of 24 hours from its date of issue provided that Afinitek Ltd has not previously withdrawn it by written or oral notice to the Customer.

## 3 APPLICATION OF TERMS

**3.1** (Subject to clause 3.4) these Conditions are the only conditions on which Afinitek Ltd is prepared to deal with the Customer and they will govern the Contract and all of Afinitek Ltd 's future supplies to the Customer.

**3.2** No terms, conditions or warranties endorsed upon, delivered with, referred to or stipulated or contained in any purchase order or other similar document delivered or sent by the Customer to Afinitek Ltd will form part of the Contract.

**3.3** Any reference in the Order Acknowledgement to the Customer's purchase order or other similar document will not be deemed to imply that any terms, conditions or warranties endorsed upon, delivered with, referred to, stipulated or contained in such purchase order or other similar document will form part of the Contract.

**3.4** No employee or agent of Afinitek Ltd has authority to vary these Conditions orally. No variation to, waiver of or addition to these Conditions or any representation about the Works will have any effect unless it is agreed in writing and contains a specific reference to these Conditions and is signed on Afinitek Ltd behalf by a director of Afinitek Ltd

**3.5** Each purchase order for Works issued by the Customer will be deemed to be an offer by the Customer to purchase Works subject to these Conditions.

**3.6** No purchase order placed by the Customer will be deemed to be accepted by Afinitek Ltd until an Order Acknowledgement is issued by Afinitek Ltd or (if earlier) Afinitek Ltd supplies the Works to the Customer.

**3.7** The Customer must ensure that the content of its order and any applicable specification are complete and accurate.

**3.8** Unless otherwise agreed in writing all drawings, illustrations, descriptions, specifications, technical data, advertising and other similar information issued by Afinitek Ltd or contained on Afinitek Ltd Website or in Afinitek Ltd's catalogues, brochures, trade literature, price lists or other similar published materials are issued or published only for the purpose of giving an approximate idea of the Works described in them and will not form part of the Contract.

**3.9** Any purchase order which has been accepted by Afinitek Ltd in accordance with clause 3.6 may only be cancelled, postponed or varied by the Customer with the prior written consent of Afinitek Ltd and on terms that the Customer will indemnify Afinitek Ltd in full against all losses (including but not limited to loss of profit), costs (including but not limited to inventory and other commitments made by Afinitek Ltd as a result of such purchase order), damages, charges and expenses incurred (directly or indirectly) by Afinitek Ltd as a result of such cancellation, postponement or variation.

## 4 DELIVERY

**4.1** Any times specified or agreed by Afinitek Ltd for the delivery of the Works are given in good faith but are an estimate only. Afinitek Ltd will use its reasonable endeavours to deliver the Works within the times specified in the Order Acknowledgement or otherwise agreed in writing and if no time is specified or agreed by Afinitek Ltd delivery will take place within a reasonable time. The time for the delivery of the Works will not be of the essence of the Contract.

**4.2** (Subject to the provisions of clause 4.3) the Customer will collect the Works from Afinitek Ltd's place of business and delivery will be deemed to take place when Afinitek Ltd notifies the Customer that the Works are ready for collection and unless otherwise agreed in writing the Customer will collect the Works within three working days of the issue of such notice.

**4.3** If Afinitek Ltd agrees to deliver the Works then subject to clause 4.4 delivery will be deemed to take place when the Works are delivered to the Customer at the place stated in Afinitek Ltd 's Order acknowledgement or such other place as the parties may agree except that delivery to a carrier for the purpose of transmission to the Customer will be deemed to be delivery to the Customer and sections 32(2) and (3) of the Sale of Goods Act 1979 will not apply.

**4.4** Subject to clause 4.3 Afinitek Ltd will make such arrangements for the carriage and insurance of the Works as it thinks appropriate but the Customer will indemnify Afinitek Ltd against any costs or expenses Afinitek Ltd incurs as a result of such carriage and insurance (including but not limited to export and/or import duties and any costs of packing, loading and/or unloading) such costs and/or expenses to be paid by the Customer when it is due to pay for the Works.

**4.5** Afinitek Ltd will use reasonable endeavours to ensure where necessary that the Works will be packed so as to be adequately protected against damage in normal conditions of transit of usual duration.

**4.6** Afinitek Ltd may deliver the Works in installments. Deliveries of further installments may be withheld until the Works comprised in earlier installments have been paid for in full. Default by Afinitek Ltd (howsoever caused) in respect of one or more installments will not entitle the Customer to terminate the relevant Contract as a whole.

**4.7** In the event of any delay in the delivery of any Goods and/or the performance of any Services which are attributable to any act or omission by the Customer:

(a) Delivery of the Goods and/or performance of the Services will be deemed to have taken place at the time which but for such delay, delivery or performance it would have taken place and any extra costs (including but not limited to storage and insurance costs) incurred as a result of such delay will be added to the Contract price and paid by the Customer; and

(b) Afinitek Ltd may sell or otherwise dispose of such Goods (as it sees fit) 28 days after such delay and deduct any monies payable to Afinitek Ltd by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall.

**4.8** Where the Works are to be supplied from stock such supply is subject to the availability of the stock at the date of delivery.

**4.9** On delivery to the Customer all Works should be examined by the Customer Afinitek Ltd will not be liable for any damage to or any shortages in or non-delivery of the Works (even if caused by Afinitek Ltd's negligence) unless the same is notified in writing by the Customer to Afinitek Ltd (together with all relevant details) within 48 hours of the actual or anticipated date of delivery (as appropriate). Any damage to or any shortages in or non-delivery of part of the Works will not affect the Contract in respect of the other parts of the Works.

#### 4 DELIVERY cont...

**4.10** Subject to a notice being provided in accordance with clause 4.9 Afinitek Ltd will, if it is reasonably satisfied that any Works have not been delivered as a result of Afinitek Ltd's fault (in its sole discretion) either arrange for delivery as soon as reasonably possible or (where the Contract price has been invoiced) give credit (at the pro rata Contract price) to the Customer for such Works.

**4.11** If Afinitek Ltd complies with clause 4.9 it will (subject to clause 9.2) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for such shortages or non-delivery.

**4.12** The Customer will (at its own expense) provide such advice, assistance and information as may be required to enable Afinitek Ltd to perform its obligations under this Contract.

#### 5 RISK AND OWNERSHIP

**5.1** The Customer acknowledges that before entering into this Contract it has expressly represented and warranted that it is not insolvent and has not committed any act of bankruptcy, or being a company with limited and unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver, to petition for winding up of the Customer or exercise any other rights over or against the Customer's assets.

**5.2** (Unless otherwise agreed in writing) the Goods are at the risk of the Customer from the time of delivery or deemed delivery (as appropriate) to the Customer in accordance with these Conditions and loading and off loading (as appropriate) will be at the Customer's risk. Section 20(2) of the Sale of Goods Act 1979 will not apply.

**5.3** (Notwithstanding that risk in the Goods will pass to the Customer in accordance with the provisions of clause 5.2) ownership of the Goods (both legal and equitable) will remain with Afinitek Ltd (unless ownership is properly vested in some other person by the operation of any statute) until Afinitek Ltd has received in full (in cash or cleared funds)

- (a) All sums due in respect of the Goods; and
- (b) All other sums which are or which become due to Ltd from the Customer on any account.

**5.4** Until ownership of the Goods has passed to the Customer under clause 5.3, the Customer will:

- (a) Hold the Goods on a fiduciary basis as Afinitek Ltd's bailee;
- (b) Keep the Goods free from any charge, lien or other encumbrance;
- (c) Store the Goods (at no cost to Afinitek Ltd) separately from all other goods or materials of the Customer or any third party in such a way that they remain readily identifiable as Afinitek Ltd's property and easily accessible to Afinitek Ltd.
- (d) Not destroy, deface or obscure any identifying mark on the Goods or their packaging;
- (e) Maintain the Goods in a satisfactory condition;
- (f) Insure the Goods on Afinitek Ltd's behalf for their full price or replacement value (whichever is the greater) against all usual risks and to the reasonable satisfaction of Afinitek Ltd and on request produce such policy of insurance to Afinitek Ltd;

## 5 RISK AND OWNERSHIP cont...

(g) hold all proceeds of the insurance referred to in clause 5.4(f) on trust for Afinitek Ltd and not mix it with any other money or pay the proceeds into any overdrawn bank account; and

(h) Allow Afinitek Ltd access at any reasonable time to enable Afinitek Ltd to verify that the Customer has complied with its obligations under this clause 5.4.

**5.5** The Customer may resell, use or otherwise dispose of the Goods before ownership has passed to it only if any such sale, use or disposition will be effected in the ordinary course of the Customer's business at full market value and will be a sale, use or disposition of Afinitek Ltd's property on the Customer's own behalf and the Customer will deal as principal when making such sale, use or disposition.

**5.6** Once payment becomes due, Afinitek Ltd may while the owner of the Goods (without prejudice to its other rights) demand the immediate return of the Goods at any time and the Customer must comply with (and bear the cost of) such demand immediately. If the Customer fails to return such Goods, the Customer grants to Afinitek Ltd or its successors in title, and their respective employees and agents, an irrevocable license to enter the Customer's premises (with or without vehicles) to remove the Goods (the cost of which shall be borne by the Customer) and may sell or otherwise deal with the Goods.

**5.7** Afinitek Ltd will be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Afinitek Ltd.

**5.8** The Goods will be deemed sold or used in the order delivered to the Customer.

## 6 PRICE AND PAYMENT

**6.1** The price for the Works will be the price set out in the Order Acknowledgement (or otherwise agreed in writing) between the parties.

**6.2** Each price is based on the scope of the Works and the instructions and information provided by the Customer. Afinitek Ltd reserves the right (in its absolute discretion) to amend the price to cover any increase in cost which may arise as a result of additional Works being requested by the Customer (and agreed by Afinitek Ltd) or additional or incomplete instructions or information being provided by the Customer.

**6.3** Quotations given in a currency other than sterling are based on the rate of exchange at the time of quoting and (unless otherwise agreed in writing between the parties) the price may be subject to revision if any different rate of exchange is ruling at the date of invoice.

**6.4** (Unless otherwise agreed in writing) the price for the Works is exclusive of any value added tax (and any other tax or duty relating to the manufacture, transportation, sale or delivery of the Works) and any costs or charges in relation to export and/or import, packaging, loading, unloading, carriage and insurance. Such costs and expenses will be paid by the Customer when it is due to pay for the Works.

**6.5** Where Afinitek Ltd agrees (in its discretion) to bring forward the date of delivery of the Works at the Customer's request any additional costs reasonably incurred by Afinitek Ltd shall be charged to the Customer in addition to the Contract price.

## 6 PRICE AND PAYMENT cont...

**6.6** Afinitek Ltd may invoice the Customer for the Works at any time after the delivery of the Works or the delivery of any installment (as appropriate). If any delivery is postponed at the request or by the default of the Customer then Afinitek Ltd may submit its invoice at any time after the Works are ready for delivery or would have been ready but for such request or default on the part of the Customer.

**6.7** (Unless otherwise agreed in writing) where the terms for payment in the Order Acknowledgement show "COD", Afinitek Ltd will not be bound to deliver the Goods until the Customer has paid the price for them. Payment shall be due before the Delivery Date.

**6.8** (Unless otherwise agreed in writing) where the terms for payment in the Order Acknowledgement show "Net", payment of the price will be due on the date when the period as specified in the Order Acknowledgement expires.

**6.9** Where no terms for payment are set out in the Order Acknowledgement or otherwise agreed in writing payment of the price will be made within 30 days from the date of delivery of the Works.

**6.10** No payment will be deemed to have been received until Afinitek Ltd has received cleared funds.

**6.11** Time for payment will be of the essence of the Contract and the Customer will indemnify Afinitek Ltd against all expenses and legal costs incurred by Afinitek Ltd in recovering overdue amounts.

**6.12** All payments payable to Afinitek Ltd under the Contract will become due immediately on termination of this Contract notwithstanding any other provision of these Conditions.

**6.13** The Customer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Afinitek Ltd to the Customer.

**6.14** Afinitek Ltd may (but will not be obliged) at any time or times without notice to the Customer set off any liability of the Customer to Afinitek Ltd against any liability of Afinitek Ltd to the Customer (in either case howsoever arising and whether such liability is present, future, liquidated or un-liquidated). Any exercise by Afinitek Ltd of its rights under these Conditions will be without prejudice to any other rights or remedies available to Afinitek Ltd under these Conditions or otherwise.

**6.15** If the Customer fails to pay Afinitek Ltd any sum due pursuant to the Contract the Customer will, subject to clause 6.16, be liable to pay interest to Afinitek Ltd on such sum from the due date for payment at an annual rate of 4% above the base lending rate of Royal Bank of Scotland plc from time to time accruing on a daily basis until payment is made in full (whether before or after any judgment).

**6.16** As an alternative to its remedy in clause 6.15 Afinitek Ltd reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

**6.17** Without prejudice to the provision of clauses 6.14 and 6.15 if the Customer fails or Afinitek Ltd reasonably believes that the Customer will fail to pay for the Work or any other work under any other contract when due Afinitek Ltd may:

(a) Demand payment of all outstanding balances whether due or not under this Contract or any other contract between the Customer and Afinitek Ltd;

## 6 PRICE AND PAYMENT cont...

- (b) Treat the Contract or any other contract between the Customer and Afinitek Ltd as repudiated by the Customer;
- (c) Suspend any future performance of the Contract or any other contract between the Customer and Afinitek Ltd until all overdue sums have been paid; or
- (d) Appropriate any payments made by the Customer to such of the Works (or such works supplied under any other contract between the Customer and Afinitek Ltd) as Afinitek Ltd may think fit (notwithstanding any purported appropriation by the Customer).

## 7 QUALITY

**7.1** The Customer acknowledges that Afinitek Ltd is not the manufacturer of the Goods and may not itself perform any or all of the Services and that Afinitek Ltd's expertise is in the sourcing of the Works only. The Customer acknowledges that as an intermediate supplier of the Goods Afinitek Ltd only checks the external packaging of the Goods for obvious signs of damage and does not in any way inspect the quality or condition of the Goods themselves.

**7.2** The Customer acknowledges that the manufacturer of the Works typically provides warranty assurances directly for the benefit of end users of the Works.

**7.3** The Customer acknowledges that Afinitek Ltd does not hold itself out as having any particular expertise in relation to the actual Works and the Customer agrees that it relies entirely on its own skill and judgment in evaluating the suitability and fitness of the Works for its purpose.

**7.4** The Customer acknowledges that the prices charged by Afinitek Ltd for the Works are based strictly on the quality assurances set out in this clause 7.

**7.5** Based on the acknowledgements set out in this clause 7 Afinitek Ltd will:

- (a) Use its reasonable endeavors to transfer to the Customer the benefit of any warranty or guarantee given to Afinitek Ltd;
- (b) Comply with its returns policy as set out in clause 8; and
- (c) (where Afinitek Ltd itself performs the Services rather than procuring a third party to perform the Services to the Customer on behalf of Afinitek Ltd) perform the Services with reasonable skill and care.

**7.6** The Customer agrees that Afinitek Ltd will not (subject to clauses 7.5 and 9.1) be responsible for or give any warranties in relation to the quality or suitability of the Works and that provided Afinitek Ltd complies with the provisions of clause 7.5 Afinitek Ltd will (subject to clause 9.2) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for any quality or suitability claims in relation to the Works.

## 8 RETURNS POLICY

**8.1** Any Goods to be returned by the Customer to Afinitek Ltd will only be dealt with by Afinitek Ltd in accordance with the provisions set out in this clause 8.

**8.2** Where the Customer wishes to return any Goods (for any reason) the Customer should first contact its account manager at Afinitek Ltd. Should the problem not be resolved to the Customer's satisfaction the Customer should contact Customer returns who will ask the Customer to provide the information requested in the customers returns request form or through the Customers usual contact at Afinitek Ltd which can be sent to Afinitek Ltd by fax, e-mail, hard copy or online. The Customer acknowledges that delays will occur in cases where any of the requested information is not provided.

**8.3** Returns Merchandise Authorisation ("RMA"). An RMA number must be obtained from the Afinitek Ltd technical services customer returns desk before any return will be processed in accordance with this clause 8. Goods returned without a valid RMA number are likely to be rejected by Afinitek Ltd. RMA numbers are valid for 10 days from the date of issue. If the Goods are not returned within 10 days the RMA will be cancelled and a new RMA number must be requested if the Customer still wishes to return the Goods. When preparing the Goods for return the Customer must ensure that the RMA number is clearly visible on a label on the outer covering.

**8.4** Incorrectly Ordered Goods. Incorrectly ordered Goods are the responsibility of the Customer. The Customer acknowledges that Afinitek Ltd is under no obligation to accept the return of incorrectly ordered Goods.

**8.5** Returns Due to Later Delivery. Returns due to late delivery must be requested by fax or e-mail within 24 hours of the due delivery date. The original purchase order must contain details of any cut-off delivery date and Afinitek Ltd must agree in writing that a deadline for delivery had been accepted by Afinitek Ltd. If Afinitek Ltd has accepted such deadline Afinitek Ltd will at its own cost arrange for the collection of goods falling into this category.

**8.6** Dead On Arrival ("DOA") Goods. DOA Goods are those found to have a fault on delivery. The fact that there is a fault must be confirmed by someone with technical knowledge and the Customer must provide as much specific technical detail as is reasonably possible. DOA Goods must be notified within 7 days of delivery of the Goods in order to qualify for credit or replacement (at Afinitek Ltd's option and in Afinitek Ltd's absolute discretion). The packaging of the Goods must be in pristine condition otherwise the Customer will be subject to a minimum 20% handling/restocking fee. The freight cost of returning the Goods to Afinitek Ltd will be the responsibility of the Customer. Afinitek Ltd will meet the reasonable costs of returning replacement Goods (as appropriate) to the Customer and also any carriage costs incurred in sorting the problem out.

**8.7** Faulty after 7 Days. The fact that there is a fault must be confirmed by someone with technical knowledge please be specific. Goods reported as faulty after 7 days but within 12 months from the date of delivery of such Goods will be accepted back for evaluation when a decision will be made to repair or replace. The Customer acknowledges that no credit or refund will be given except in exceptional circumstances and in Afinitek Ltd's absolute discretion. The Customer is responsible for the freight cost of returning the Goods to Afinitek Ltd. Afinitek Ltd will meet the costs of returning the Goods or replacement Goods to the Customer and also any carriage costs incurred in sorting the problem out.

**8.8** No Defect Found ("NDF"). If Goods are returned and are found to be of NDF status a handling/restocking fee of at least 20% will be invoiced. The percentage charged will depend on amongst other things the amount of labour involved and the condition of the packaging and contents and Afinitek Ltd reserves the right to insist on a purchase order covering this cost and the return freight cost before returning the Goods.



## 8 RETURNS POLICY cont...

**8.9 Goods Returned Not In Original Condition.** Goods returned where the packaging and/or contents is found not to be in its original condition are likely to be rejected on arrival. Should Afinitek Ltd agree to accept such Goods (in its absolute discretion) Afinitek Ltd reserves the right to impose a handling/re-stocking fee of at least 20% of the original sale value of the Goods. Should items be damaged in transit during its return to Afinitek Ltd it is the responsibility of the Customer (and not Afinitek Ltd) to take this matter up with the carriers.

**8.10 Packaging and Labeling.** Where possible, the packaging of the Goods being returned should be protected by using an outer cover. The Customer should not write on, or attach labels, to the packaging itself if this can be avoided. When preparing the Goods for return the Customer should ensure that the RMA number is easily visible on a label on the outer covering.

**8.11 Overdue Accounts.** No returns will be accepted from any Customer whose account is overdue.

**8.12** Afinitek Ltd will not be obliged to comply with any of the provisions in this clause 8 unless:

(a) (where the Goods are faulty and the fault is apparent on reasonable inspection) the Customer gives written notice of the fault to Afinitek Ltd within 7 days of the date of delivery of the Goods; and

(b) (Where the Goods are faulty and fault is not apparent on reasonable inspection) the Customer gives written notice of the fault to Afinitek Ltd within 7 days of the date when the Customer discovers or ought reasonably to have discovered the fault.

**8.13** Notwithstanding any other provision of this clause 8 if the Goods are found to be faulty but:

(a) The fault arises as a result of the Customer's negligence;

(b) The fault arises as a result of fair wear and tear or abnormal working conditions;

(c) The fault arises as a result of any misuse, physical damage (including but not limited to dropping, spillage or foreign objects) or accident (unless Afinitek Ltd is directly responsible for such);

(d) The Customer makes any further use of the Goods after giving written notice of a fault;

(e) The fault arises because the Customer has failed to follow's Afinitek Ltd or the manufacturers instructions (whether oral or in writing) as to the storage, assembly, use, handling or maintenance of the Goods or (if there are none) good trade practice;

(f) The fault arises as a result of any testing or commissioning of the Goods performed by the Customer or any third party;

(g) The fault arises as a result of any alteration, servicing or repair of the Goods not made by Afinitek Ltd; or

(h) The Customer acknowledges that the Contract states that the Goods are sold in their actual state without warranty then the Customer acknowledges that Afinitek Ltd is not obliged to comply with its obligations under this clause 8, that Afinitek Ltd reserves the right to apply a reasonable labour charge to the Customer without completing any repair and Afinitek Ltd reserves the right to retain the Goods until a purchase order is received covering the labour charge and the return freight cost.

## 9 LIMITATION OF LIABILITY

**9.1** All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979 but subject always to the provisions of clause 12.2)) are, to the fullest extent permitted by law, excluded from the Contract.

**9.2** Nothing in these Conditions exclude or limit the liability for fraudulent misrepresentation or for any death or personal injury caused by Afinitek Ltd's negligence.

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 9.3 AND 9.4

**9.3** (Subject to clause 9.1 and 9.2) Afinitek Ltd will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any:

(a) economic loss of any kind (including but not limited to loss of use, profit, anticipated profit, business, contracts, overhead recovery, machining costs, revenue or anticipated savings);

(b) Any damage to the Customer's reputation or goodwill;

(c) Any product recall or business interruption costs: or

(d) Any other special, indirect or consequential loss or damage (Even if Afinitek Ltd has been advised of such loss or damage) arising out of or in connection with the Contract.

**9.4** (Subject to the provisions of clause 9.1, 9.2 and 9.3) Afinitek Ltd 's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising out of or in connection with this Contract will be limited to the Contract price.

**9.5** The provisions of this clause 9 shall survive the termination or expiry (for whatever reason) of this Contract.

**9.6** THE PRICES CHARGED FOR THE WORKS ARE BASED STRICTLY ON THE UNDERSTANDING OF ACCEPTANCE BY THE CUSTOMER OF THE PROVISIONS IN THE CONTRACT FOR THE LIMITATION OF R.T.LTD'S LIABILITY. SHOULD THE CUSTOMER REQUIRE AFINITEK LTD TO ACCEPT ADDITIONAL LIABILITY THIS MAY BE DISCUSSED BETWEEN THE PARTIES AND THE PRICE INCREASED ACCORDINGLY.

## 10 THE CUSTOMER'S PROPERTY

**10.1** While Afinitek Ltd will take reasonable care of the Customer's Property whilst it is in Afinitek Ltd's possession, control or custody the Customer's Property will (unless otherwise agreed in writing) remain at the Customer's risk and responsibility.

**10.2** Afinitek Ltd will not be liable for any loss or damage to the Customer's Property unless such loss or damage arises as a direct result of Afinitek Ltd's negligence. Where Afinitek Ltd is liable under this clause 10.1 Afinitek Ltd's liability to the Customer will be limited to the actual cost of the replacement or repair of the loss or damage to the Customer's Property.

## 10 THE CUSTOMER'S PROPERTY cont...

**10.3** The Customer will ensure that the Customer's Property is in good condition and suitable for use by Afinitek Ltd in the performance of the Contract and while Afinitek Ltd will use reasonable endeavours to verify any relevant aspects of the Customer's Property no responsibility is accepted by Afinitek Ltd for its accuracy.

**10.4** Any defect in the Works which is due in whole or in part to the Customer's Property will not entitle the Customer to terminate the Contract, reject the Works, make any deductions from the Contract price or claim damages in respect of such defect.

**10.5** The Customer will keep Afinitek Ltd indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding awarded against or incurred by Afinitek Ltd as a result of or in connection with the use by Afinitek Ltd of the Customer's Property.

**10.6** Afinitek Ltd (without prejudice to any other remedy it may have) has a general lien on all of the Customer's Property in its possession (for any reason) in respect of all sums owed to Afinitek Ltd by the Customer.

## 11 CONFIDENTIALITY

**11.1** The Customer will keep confidential all technology, technical data, commercial information, know-how, specifications, inventions, processes, initiatives and other information which is of a confidential nature and which has been disclosed to the Customer by Afinitek Ltd or its agents and any other confidential information concerning Afinitek Ltd's business or its products which the Customer may obtain as a result of or in connection with the Contract ("Confidential Information").

**11.2** The Customer will restrict disclosure of the Confidential Information to such of its employees, agents or subcontractors as need to know the same and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Customer.

**11.3** The Customer will not without the prior written consent of Afinitek Ltd publish or disclose the Confidential Information to any third party or make any use of the Confidential Information except to the extent necessary to implement the Contract.

## 12 IPR

**12.1** The Customer will keep Afinitek Ltd indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding in respect of any infringement or alleged infringement of any IPR resulting from any use by Afinitek Ltd of the Customer's Property or any compliance by Afinitek Ltd with the Customer's instructions, whether express or implied.

**12.2** Nothing in these Conditions will be construed as any representation or warranty by afinitek Ltd that the design, manufacture, use or sale of the Works is not an infringement of any third party intellectual property rights and the Customer acknowledges that Afinitek Ltd only transfers such title as Afinitek Ltd has.

## 13 TERMINATION

**13.1** Afinitek Ltd may terminate the Contract immediately if:

- (a) The Customer fails to pay the price on the due date;
- (b) The Customer is in breach of any term of the Contract and (where remediable) has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (c) There is a material change in the ownership or control of the Customer; or
- (d) The Customer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administration or any equivalent or analogous event occurs in any jurisdiction.

**13.2** The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.

**13.3** Any Conditions which expressly or impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

## 14 EXPORT SALES

**14.1** Where the Works are supplied for export from the United Kingdom the provisions of this clause 14 will (subject to any special terms agreed in writing between the parties) apply despite any other provision of these Conditions.

**14.2** The Uniform Laws on International Sales Act 1967 will not apply.

**14.3** Unless otherwise agreed in writing the currency will be pounds sterling. The Customer will where requested by Afinitek Ltd establish and maintain in favour of Afinitek Ltd an irrevocable and confirmed letter of credit in English with a UK clearing bank payable on drafts drawn at sight on presentation to the bank by Afinitek Ltd of a certified copy of Afinitek Ltd 's invoice. All bank charges and other expenses in relation to the letter of credit will be borne by the Customer.

**14.4** Unless otherwise agreed in writing Works will be sold C.I.F (as defined in INCOTERMS 2000 Edition).

**14.5** The Customer will be responsible for complying with any legislation or regulation governing the export of the Works from the United Kingdom and the importation of the Works into the country of destination and for payment of any relevant duties or taxes.

## 15 LIEN

Afinitek Ltd will have in respect of unpaid debts due to it from the Customer a general lien on all property of the Customer which is in Afinitek Ltd 's possession for whatever reason and whether worked upon or not.

## 16 FORCE MAJEURE ETC.

Afinitek Ltd will not be liable to the Customer or be deemed to be in breach of these Conditions by reason of any delay in performing or failure to perform any of its obligations under these Conditions if such delay or failure was beyond Afinitek Ltd's reasonable control, was of an unexpected or exceptional nature or if the duration of the delay is not substantial. If Afinitek Ltd is unable to perform its obligations under these Conditions in accordance with this clause 16 it will promptly notify the Customer of the nature and extent of the circumstances in question.

## 17 GENERAL

**17.1** The Customer will not without the prior written consent of Afinitek Ltd assign or transfer the Contract or any part of it to any other person.

**17.2** Afinitek Ltd may without the prior written consent of the Customer assign, transfer or subcontract the Contract or any part of it to any other person.

**17.3** Each right or remedy of Afinitek Ltd under these Conditions is without prejudice to any other right or remedy which Afinitek Ltd may have under these Conditions or otherwise.

**17.4** Any notice or other document to be served under the Contract must be in writing and may be delivered or sent by prepaid first class post or facsimile transmission. Any notice or document shall be deemed served, if delivered at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.

**17.5** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

**17.6** Failure or delay by either party in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.

**17.7** Any waiver by either party of any breach of, or any default under, any provision of the Contract by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

**17.8** A person who is not a party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause 17.8 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**17.9** The Customer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of Afinitek Ltd prior to the Contract upon which the Customer relied in entering into the Contract whether such statement was made orally or in writing.

**17.10** The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.