



North Works, Westgate, Aldridge, Walsall, WS9 8EX

Credit Application Form

Company Name :

Address :

Delivery Address :

(If different from above)

Please tick which company/companies you are applying for a credit account with :

KGuard International

Trademagic Limited

Personnel authorised to make purchases :

Tel No :

Email :

Accounts Email :

Registration No:

VAT No:

Purchasing Contact :

Accounts Contact :

Are official purchase orders required? Yes No

How long have you been trading?

Credit Required : £

Registered Address : *(if different from above)*

For businesses other than Limited companies, please forward information regarding partners/proprietors on a separate piece of paper to include full names and home address of each partner/proprietor.

Trade References

(1) Name	<input type="text"/>	(2) Name	<input type="text"/>
Address	<input type="text"/>	Address	<input type="text"/>
Telephone Number	<input type="text"/>	Telephone Number	<input type="text"/>
Fax Number	<input type="text"/>	Fax Number	<input type="text"/>

I, being authorised officer of this business agree that payment of all accounts will be made by us to you (the supplier) within your credit terms, and that all materials are subject to your conditions of sale (copy enclosed). This signature of authorisation is confirmation of our acceptance of the aforesaid conditions and that we will be bound by them in any contract between us. Payment terms are 30 days from end of month unless otherwise agreed in writing.

Signed _____ For and on behalf of _____

Print Name _____ Position _____

Date _____ (Must be a senior member of the management team)

We will make a search with a credit agency, which will keep a record of that search and will share that information with other businesses. We may also make enquiries about the principle directors with a credit agency.

TRADEMAGIC LTD TERMS & CONDITIONS OF SALE

1 Definitions

- 1.1. **Business Days:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.2. **Buyer:** any natural person or (corporate body/ies, howsoever comprised) who buys or agrees to buy the Goods from the Seller.
- 1.3. **Conditions:** the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.4. **Contract:** any contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.
- 1.5. **Delivery Date:** the date specified by the Seller when the Goods are to be delivered.
- 1.6. **Force Majeure Event:** any event beyond the Seller's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of sellers subcontractors. Goods: the goods (or any instalment of them) which the Buyer agrees to buy from the Seller
- 1.7. **Price:** the price of the Goods excluding carriage, packing, insurance and VAT.
- 1.8. **Seller:** TRADEMAGIC Limited (registered in England and Wales with company number 05928563) whose registered office is at Marston House, 5 Elmdon Lane, Marston Green, Birmingham, B37 7DL.
- 1.9. **Specification:** the specification for the Goods, including any related plans and drawings, that is requested by the Buyer.

2 Conditions applicable

- 2.1. These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.2. All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3. The order shall only be deemed to be accepted when the Seller, or the Seller's authorised representative acting with the permission of the Seller, issues a written acceptance of the order, at which point the contract shall come into existence between the Buyer and the Seller.
- 2.4. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.5. Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be invalid unless agreed in writing by the Seller or the Seller's duly authorised representative.

3 The Price and payment

- 3.1. The Price shall be the Sellers quoted price. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2. Payment of the Price and VAT shall be due within 30 days of the date of the invoice.
- 3.3. In respect of orders agreed between the Buyer and the Seller to be delivered in instalments, each delivery of the Goods pursuant to clause 7.2 shall constitute a separate contract for purchase of the respective Goods and shall be invoiced by the Seller and paid by the Buyer separately.
- 3.4. Time of payment shall be of the essence for each Contract.
- 3.5. Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 4% above Barclays Bank Plc's standard base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.

4 Termination and Suspension

- 4.1. If the Buyer becomes subject to any of the events listed in clause 4.2, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer.
- 4.2. For the purposes of clause 4.1, the relevant events are:
 - 4.2.1. the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - 4.2.2. the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 4.2.3. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - 4.2.4. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
 - 4.2.5. (being a company) the holder of a qualifying floating charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 4.2.6. a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
 - 4.2.7. (being an individual) the Buyer is the subject of a bankruptcy petition or order;
 - 4.2.8. a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 4.2.9. any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 4.2.1 to clause 4.2.6 (inclusive);
 - 4.2.10. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 4.2.11. the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - 4.2.12. (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 4.3. Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer

and the Seller if the Buyer becomes subject to any of the events listed in clause 4.2.1 to clause 4.2.12, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

- 4.4. On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
4.5. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

4.6. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

5. The Goods

- 5.1. The quantity and description of the Goods shall be as set out in the Seller's quotation (overleaf)
5.2. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Specification. This clause 5.2 shall survive termination of the Contract

6 Limitation of liability

6.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:

- 6.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
6.1.2. fraud or fraudulent misrepresentation;
6.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
6.1.4. defective products under the Consumer Protection Act 1987; or
6.1.5. any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

6.2. Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatsoever to the Buyer in respect of those Goods.

6.3. The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.

6.4. Subject to clauses 6.1 and 6.2:

6.4.1. the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

6.4.2. the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed [100%] of the Price of the Goods.

7 Delivery of the Goods

7.1. Delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

7.2. The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

7.3. Delivery of the Goods shall be completed on the Goods' arrival at the Buyer's address.

7.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7.5. If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7.6. If the Buyer fails to accept delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract:

7.6.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and

7.6.2. the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

8 Acceptance of the Goods

8.1. The Buyer shall be deemed to have accepted Goods 1 Business Day after delivery (or deemed delivery) to the Buyer.

8.2. After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract.

9 Quality and Rejection of Goods

9.1. The Seller warrants that upon delivery, the Goods shall:

- 9.1.1. conform in all material respects with the Specification;
9.1.2. be free from material defects in design, material and workmanship; and
9.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

9.2. Subject to clause 9.3, if the Buyer gives notice in writing to the Seller within a reasonable time of discovery, not exceeding 30 days from delivery, that some or all of the Goods do not comply with the warranty set out in clause 9.1; and

9.2.1. the Seller is given a reasonable opportunity of examining such Goods and agrees with the Buyer's view that the Goods do not comply with the Warranty in clause 9.1; and

9.2.2. the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,

the Seller shall, at its option, repair or replace the defective Goods, or refund the Price of the defective Goods in full.

9.3. The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 9.1 in any of the following events:

- 9.3.1. the Buyer makes any further use of such Goods after giving notice in accordance with clause 9.2;
- 9.3.2. the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
- 9.3.3. the Buyer alters or repairs such Goods without the written consent of the Seller;
- 9.3.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 9.3.5. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.4. Except as provided in this clause 9, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 9.1.

9.5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

9.6. These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

10 Title and Risk

10.1. The risk in the Goods shall pass to the Buyer on completion of delivery.

10.2. Title to the Goods shall not pass to the Buyer until the earlier of:

the Seller receives payment in full (in cash or cleared funds) for the Goods and any other Goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

10.2.1. the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 10.4.

10.3. Until title to the Goods has passed to the Buyer, the Buyer shall:

- 10.3.1. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- 10.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 10.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 10.3.4. notify the Seller immediately if it becomes subject to any of the events listed in clause 4.2; and 10.3.5. give the Seller such information relating to the Goods as the Seller may require from time to time.

10.4. Subject to clause 10.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

10.4.1. it does so as principal and not as the Seller's agent; and

10.4.2. title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

10.5. If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 4.2, then, without limiting any other right or remedy the Seller may have:

10.5.1. the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

10.5.2. the Seller may at any time:

10.5.2.1. require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

10.5.2.2. if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

11 Force Majeure

11.1. The Seller shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

12 Governing Law

12.1. The Law of England and Wales shall govern the validity, construction and performance of any Contract to which these conditions apply.

13 Jurisdiction

13.1. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with any Contract or its subject matter or formation (including non-contractual disputes or claims) to which these Conditions apply.