



## **Xerogrid Limited terms and conditions**

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**Terms and Conditions of Sales August 2017**

### **1 Definitions**

In these conditions:

“Buyer” means a person or organisation to whom is Xerogrid supplies goods and services pursuant to an order

“Contract” means any contract for the sale of goods and services by Xerogrid Ltd to a Buyer

“Goods” means goods and/or materials which Xerogrid LTD supplies to a Buyer pursuant to a contract.

### **2 Application**

2.1 These conditions shall govern and be incorporated in every Contract made by or on behalf of Xerogrid Ltd with a Buyer and shall prevail over any terms and conditions contained or referred to in any documentation submitted by a Buyer or in correspondence or elsewhere or implied by trade custom practice or course of dealing

2.2 A Buyer placing an order for goods and services shall constitute unqualified acceptance of these conditions

2.3 Any variation of these conditions will be only valid if it is in writing and signed a director of Xerogrid and the Buyer and expressly states that it varies these conditions.

### **3 Quotations and Acceptance**

3.1 A quotation by Xerogrid Ltd does not constitute an offer and Xerogrid Ltd may withdraw or revise a quotation at any time before accepting a Buyer’s order.

3.2 Xerogrid’s acceptance of any oral or written order from the Buyer shall be effective only where such acceptance is in writing and signed by an authorised representative of Xerogrid LTD.

3.3 The buyer accepts the application of products, systems, and those quoted is reasonable and within the parameters of the products design, as per manufacturers specifications.

The buyer may be required to place a reasonable deposit, up to the full value by mutual agreement.

### **4 Delivery**

4.1 Any delivery or despatch date given by Xerogrid Ltd is approximate only and Xerogrid Ltd shall not be liable to the Buyer for any failure to deliver on any particular

date or dates. Time for delivery is not of the essence and shall not be made so by the service of any notice.

4.2 Delivery to the buyer will be within reason accurate, but not binding. As many items and groups of items are bespoke, they require a reasonable deposit of up to the full value of the goods or groups of goods.

This is refundable to the buyer should they wish to cancel, but only when the goods value has been realized (re sold) or reasonable expenses for time spent by Xerogrid LTD arranging such, which will be notified to the buyer in writing, and invoiced.

4.3 If the Buyer refuses or fails to take delivery of Goods tendered in accordance with the Contract Xerogrid Ltd may terminate the Contract with Immediate effect, may dispose of the Goods as it sees fit and may recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).

4.4 Unless agreed otherwise by Xerogrid Ltd the Goods may be delivered in instalments and each such instalment shall be treated as a separate Contract.

4.5 Section 32(2) of the Sale of Goods Act 1979 does not apply and Xerogrid Ltd is not required to give the Buyer the notice specified in section 32(3) of the Act.

## **5 Price**

5.1 The price payable for the Goods, services and delivery is as stated in the quotation given to the Buyer or as listed in Xerogrid Ltd's published list of prices current at the time of despatch.

5.2 Xerogrid Ltd may at any time prior to delivery of the Goods revise prices to take account of any increase in its own costs including without limitation the costs of any goods, material, carriage, labour or overheads; the increase or imposition of any tax, duty or other levy and variation in exchange rates. Where possible Xerogrid Ltd will give one month notice of price changes to regular Buyers.

5.3 Unless otherwise specified VAT and any other tax or duty payable by the Buyer shall be added to the price.

5.4 Xerogrid will supply goods and services for export. The buyer assumes all duties and costs associated with the clearing and importing of goods after the point of entry. Xerogrid reserves the right to charge reasonable costs for all documentation required, but accepts no responsibility for any suitability at the individual countries port of entry.

## **6 Payment**

6.1 In all cases, unless agreed in writing by Xerogrid, payment is required in cleared funds before despatch. For Xerogrid approved installers, the installers Buyer's payment of invoices shall be made in full within 7 days of invoice unless otherwise agreed and confirmed in writing by Xerogrid LTD. Time shall be of the essence of payment. Xerogrid suspends the supply of Goods and or services to the Buyer where any amounts are overdue under any Contract until all such amounts have been paid.

6.2 Interest is payable at 10 per cent over the NatWest Bank plc base rate from time to time from the due date for payment until receipt by Xerogrid of the full amount (including any accrued interest) whether before or after judgement.

6.3 Xerogrid Ltd may require full or partial payment of the price prior to delivery or the provision of security by the Buyer in a form acceptable to Xerogrid LTD.

6.4 Xerogrid Ltd has a general lien on all property of the Buyer in the possession of Xerogrid Ltd (although the Buyer may have paid for it in full) in satisfaction of any amount owed by the Buyer to Xerogrid Ltd under any Contract. Xerogrid Ltd may do

anything necessary to put such property into a saleable condition, sell it on such terms it may think fit and retain from the proceeds.

## **7 Property and Risk**

7.1 Risk in the Goods passes on delivery.

7.2 Any property of the Buyer in Xerogrid Ltd's possession or under its control and all property supplied to Xerogrid Ltd by or on behalf of the Buyer is held at the Buyer's risk.

7.3 Notwithstanding delivery and passing of risk, the Goods remain the property of Xerogrid Ltd until the Buyer pays to Xerogrid Ltd the agreed price for the Goods (together with any accrued interest) and no other sums whatever shall be due from the Buyer to Xerogrid Ltd.

7.4 Until the property in the Goods passes to the Buyer the Buyer shall hold the Goods on a fiduciary basis and shall

(a) not part with possession of the Goods

(b) take proper care of the Goods and take all reasonable steps to prevent damage to or deterioration of them

(c) keep the Goods free from any charge, lien or other encumbrance and store the Goods in such a way as to show clearly that they belong to Xerogrid Ltd

(d) notify Xerogrid Ltd immediately upon the happening of any of the events set out in condition 14.2

(e) Give Xerogrid Ltd such information as Xerogrid Ltd may require from time to time

7.5 From delivery until property in the Goods passes to the Buyer, the Buyer shall insure the Goods for their full value with a reputable insurer and, upon request, shall use reasonable endeavours to have Xerogrid Ltd's interest in the Goods noted on the insurance policy. Until the property in the Goods passes to the Buyer, the Buyer shall hold the proceeds of any claim on the insurance policy on trust for Xerogrid Ltd

7.6 Xerogrid Ltd reserves the right to repossess and resell any of the Goods to which it has retained title. Xerogrid Ltd's consent to the Buyer's possession of the Goods and any right the Buyer may have to possession of the Goods shall in any event cease upon the happening of any of the events set out in condition

7.7 The Buyer grants an irrevocable right and licence to Xerogrid Ltd to enter the Buyer's premises during normal business hours in order to inspect or repossess Goods to which it has retained title and the termination for any reason of a Contract shall not affect the continuance in force of this right and licence.

7.8 The Buyer acknowledges that as a consequence of its fiduciary relationship with Xerogrid Ltd it is under a duty to Xerogrid Ltd to hold the proceeds of sale of the Goods on trust for Xerogrid Ltd and not to mingle such proceeds with other money or pay them into an overdrawn bank account and shall ensure that such proceeds are at all material times identified as Xerogrid Ltd's money.

7.9 Xerogrid Ltd shall be entitled to recover the price (plus VAT) in the event of non-payment by the Buyer notwithstanding that property in any of the Goods has not passed from Xerogrid Ltd. Xerogrid Ltd may, by notice to the Buyer at any time after delivery, pass property in the goods to the Buyer with effect from the date of the notice.

## **8 Infringement of Third Party Rights**

8.1 The Buyer shall indemnify Xerogrid Ltd against each loss, liability and cost which Xerogrid Ltd incurs as a result of complying with any requirements or specifications of the Buyer which involves any infringement or alleged infringement of the rights of any third party.

8.2 If at any time it is alleged or, In Xerogrid Ltd's reasonable opinion, is likely to be alleged that the Goods infringe the rights of any third party, Xerogrid Ltd may at its option and at its own expense

(a) modify or replace the Goods in such a way which does not detract from their overall performance so as to avoid the infringement, or

(b) procure for the Buyer the right to continue to use the Goods or

(c) re-purchase the Goods at the price paid by the Buyer

8.3 The Buyer shall notify Xerogrid Ltd immediately of any actual or threatened claim or action alleging infringement of the rights of any third party. Xerogrid Ltd shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Buyer shall provide all reasonable assistance to Xerogrid Ltd as Xerogrid Ltd may request. The cost of such proceedings shall be borne by Xerogrid Ltd.

8.4 Where Xerogrid Ltd designs the Goods pursuant to a commission by the Buyer, then any copyright, design right or other intellectual property in them shall vest in Xerogrid Ltd and the Buyer agrees that it shall do any acts and execute any documentation required by Xerogrid Ltd to secure vesting of such rights in Xerogrid.

## **9 Liability**

9.1 To the extent that any Contract contains any element of design Xerogrid Ltd agree to use reasonable skill and care.

9.2 Xerogrid Ltd is not liable to the Buyer

(a) for non-delivery unless the Buyer notifies Xerogrid Ltd within seven days from the date of Xerogrid Ltd's invoice

(b) for incorrect quantities unless the Buyer notifies Xerogrid Ltd of a claim within 14 days of receipt of the Goods

(c) For damages or loss of the Goods during carriage by Xerogrid Ltd's own transport or by a carrier on behalf of Xerogrid Ltd unless the Buyer notifies Xerogrid Ltd of a claim within 14 days of receipt of the Goods or the scheduled date of delivery, whichever is the earlier

(d) for defects in the Goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use or any act, neglect or default of the Buyer

(e) for other defects in the Goods

(f) on supply only contracts, for any costs incurred or losses suffered as a result of Incorrect installation of the Goods by the Buyer

9.3 If liability is accepted by Xerogrid Ltd under condition 9.1 or 9.2 Xerogrid Ltd's only obligation is at its option

(a) to make good any shortage or non-delivery

(b) to replace or repair any Goods found to be damaged or defective Page

(c) to refund to the Buyer the amount paid by the Buyer for the Goods which are the subject of a claim under condition 9.1

9.4 Xerogrid Ltd is not liable for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by repairs or remedial work carried out without Xerogrid Ltd's prior written approval. The Buyer shall indemnify Xerogrid Ltd against each loss, liability, and cost arising out of such claims.

9.5 Xerogrid Ltd's aggregate liability to the Buyer, whether for negligence, breach of contract, misrepresentation or otherwise, shall in no circumstances exceed the purchase price of the Goods as determined by the net price invoiced to the Buyer in respect of any occurrence or series of occurrences.

9.6 Subject to this condition 9

(a) all terms and conditions, warranties and representations expressed or implied by statute common law or otherwise in relation to the Goods are excluded

(b) Xerogrid Ltd will pass on to the Buyer the benefit of any warranty given by the manufacturer of the Goods

(c) Xerogrid Ltd is not liable to the Buyer for any loss, damage or injury, direct or indirect, resulting from defects in design, materials or workmanship or otherwise caused howsoever arising (and whether or not caused by the negligence of Xerogrid Ltd, its employees or agents) other than liability for death or personal injury resulting from Xerogrid Ltd's negligence

(d) Xerogrid Ltd is not liable for any indirect or consequential loss or expenses suffered by the Buyer, howsoever caused, and including, without limitation, loss of anticipated profits, goodwill reputation, business receipts or contracts, or losses or expenses resulting from third party claims.

9.7 Xerogrid Ltd's prices are determined on the basis of the limits of liability set out in this condition. The Buyer may by written notice to Xerogrid Ltd request Xerogrid Ltd to agree a higher limit of liability provided insurance cover can be obtained for such higher limit. Xerogrid Ltd shall effect insurance up to such limit and the Buyer shall pay on demand the amount of the premiums. The Buyer shall disclose such information as the insurers shall require and in no case, shall the Buyer be entitled to recover from Xerogrid Ltd more than the amount received from the insurers.

## **10 Specifications and performance**

10.1 Unless expressly agreed otherwise in writing by Xerogrid Ltd, all drawings, calculations designs, specifications and particulars submitted by Xerogrid Ltd are approximate only and Xerogrid Ltd is not liable for any deviation from them.

10.2 All drawings, designs, specifications and information submitted by Xerogrid Ltd shall be treated as confidential and shall not be disclosed to any third party without Xerogrid Ltd's written consent or used by the Buyer other than for the purposes authorised by Xerogrid Ltd.

10.3 Xerogrid Ltd accepts no responsibility for any errors omissions or other defects in any drawings, designs or specifications prepared by or not Xerogrid Ltd. The Buyer shall indemnify Xerogrid against each such loss, liability and cost which incurs arising from them.

10.4 Renewable energy from natural sources is not precisely predictable. All performance expectations, and calculations are based on experience and data. It is therefore not Xerogrid LTDs responsibility if these sources produce under or over quoted values.

## **11 Packaging**

11.1 The Buyer shall meet the cost of any special packaging which it may request or which may be necessitated other than by Xerogrid Ltd's normal means of delivery. The Buyer shall, unless otherwise agreed, be solely responsible for the disposal of all packaging in accordance with all regulations, whether statutory or otherwise, relating to protection of the environment.

11.2 Xerogrid is entitled to invoice the Buyer for the cost of returnable packaging materials unless they are returned in good condition, carriage paid within 30 days of the date of delivery.

## **12 Licences and Consents**

If a licence or consent of any governmental or other authority is required in connection with the Buyer's purchase or use of the Goods, the Buyer shall obtain the licence or consent at its own expense and produce evidence of it to Xerogrid Ltd on demand. Failure to obtain any licence or consent does not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by Xerogrid Ltd resulting from such failure shall be paid by the Buyer

## **13 Force Majeure**

Neither party shall be liable to the other in any way for any loss or damage arising directly or indirectly through or in consequence of performance being prevented or delayed by happenings or occurrences due to or by reason of any matters or things beyond the control of the respective parties.

## **14 Termination**

14.1 On or at any time after the occurrence of any of the events in condition 14.2, Xerogrid may stop any Goods in transit, suspend further deliveries to the Buyer, exercise its rights under condition 7 (Property and Risk) and/or terminate any Contract with the Buyer with immediate effect by written notice to the Buyer.

14.2 The events are:

- (a) the Buyer being in material breach of an obligation under a Contract
- (b) the Buyer passing a resolution for Its winding up or a court of competent jurisdiction making an order for the Buyer's winding up or dissolution
- (c) the making of an administration order in relation to the Buyer or the appointment of a receiver order, or an encumbrance taking possession of or selling, any of the Buyer's assets
- (d) the Buyer making an arrangement or composition with its creditors generally or applying to a court of competent jurisdiction for the protection of its creditors.

Upon termination, any indebtedness of the Buyer to Xerogrid Ltd becomes immediately due and payable and Xerogrid Ltd shall be under no further obligation to supply Goods or services to the Buyer

## **15 Assignment**

The Buyer may not assign or transfer, or purport to assign or transfer, any of its rights or obligations under a Contract without Xerogrid's prior written consent.

## **16 Governing Law**

These conditions and any Contract made under them shall be governed by and construed in accordance with English law and the courts of England shall have non-exclusive jurisdiction.

## **17 Exclusion of Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to these conditions nor any Contract made under them and no person other than the Buyer and Xerogrid Ltd shall have any rights thereunder, nor shall these conditions or any Contract be enforceable under that act by any other person.