

# ZIZU LIMITED

## TERMS AND CONDITIONS OF TRADING

### 1. GENERAL

- (i) Any contract entered into by Zizu Limited ('The Vendor') for the supply of goods and services is subject to these conditions. No other terms or conditions (including) any written on or attached to any purchase order, form document or correspondence) shall be included or implied unless previously agreed upon in writing and signed by an authorised officer of the vendor. No purported variation of the terms will be effective unless confirmed in writing by the vendor and in no event will any customer's standard terms and conditions of business apply. No liability shall attach to the vendor, its agent or employees in respect of any representations or Statements made, whether before or after agreement is reached, unless confirmed in writing by the vendor. No forbearance nor indulgence by the vendor in enforcing any term shall constitute a variation of it or a waiver of the vendor's rights under it.
- (ii) In the event of any conflict or inconsistency between these terms and conditions of trading and the terms of your order these terms and conditions prevail, unless otherwise agreed by the vendor in writing.
- (iii) Telephone orders must be confirmed in writing. No responsibility can be expected for inaccuracies of orders given by telephone.

### 2. DEFINITIONS

In these conditions the expression 'the order acknowledgement shall mean the form sent in accordance with these conditions under clause 3, and expression 'the Customer and the price shall have the respective meanings shown in the order of acknowledgement.

### 3. ACCEPTANCE

- (i) No order shall be deemed the expression the order acknowledgement shall mean the form sent in accordance with these conditions under clause 3 and the expression the Customer of acceptance of the written order by dispatch of the order acknowledgement the contract between the vendor and the customer shall be deemed to be made.
- (ii) Any quotation issued by the vendor shall be open for acceptance at any time up to and including the acceptance date shown on the quotation. After the expiration of the acceptance date the quotation must be confirmed by the vendor.
- (iii) Any quotation is made on the understanding that it will be accepted in full in the event of part acceptance of , the quotation by the customers written revised quotation may be sent by the vendor to the customer.
- (i) All prices shown on the vendors price list or any price quoted by the vendor are provisional only and shall be subject to variation without notice.
- (ii) Goods are invoiced at the Price ruling at the date of despatch time of agreement, as confirmed on the order acknowledgement.
- (iii) Prices do not include carriage or installation on deliveries within mainland unless otherwise stated.
- (iv) Prices quoted are exclusive of VAT which is chargeable at the current rate.
- (v) The vendor reserves the right to amend the price to cover any alterations in labour, raw material, transport or production costs or fluctuations in foreign exchange rates in the event that completion of delivery is delayed for any reason beyond the vendor control.

### 5. PAYMENT

Terms: A25% deposit may be required with the order, balance of payment is due within 30 days of delivery unless other terms are stated in writing by the vendor before the date of despatch of the invoice. The time of payment shall be the essence of the contract in the event of default in payment by the due the vendor reserves at any time to impose a rate payment charge of 2% per month or part thereof on monies overdue and to suspend delivery or terminate the contract in respect of any of the equivalent remaining undelivered.

### 6. DELAY

While time of delivery shall not be the essence of any contract the vendor shall make very reasonable effort to deliver the equipment by the agreed delivery date. The vendor shall not be liable for any delay or for any consequence of any delay in production or delivery of any goods if caused by fire, strikes, lock-outs, dispute with workmen, floods, accident, delay in transport, shortage of fuel, default of supplier, inability to obtain material, embargo act or demand of any government department or local authority as consequence of war or of hostilities (whether war may be declared or not) or by Act of God or by any other matter whatsoever beyond the vendors reasonable control. If any such delay occur then (unless the case frustrates or renders impossible or illegal the performance of this contract or otherwise discharges it) the period for the vendor to perform its obligations shall be extended by such period (not limited to the length of the delay) as the vendor may reasonably require to complete the performance of its obligations.

### 7. CANCELLATION

- (i) Cancellation of any order prior to delivery will be accepted only on the payment of 20% of the order value. However, if goods have been placed in the works, cancellation cannot be made and the full price is payable.
- (ii) Cancellation after delivery and/or after delivery and installation cannot be accepted and payment must be made in full.
- (iii) Cancellation of the order by the consumer for whatever reason shall entitle the vendor to recover any ancillary costs and expenses incurred over and above those terra laid down in 7(i) and 7(ii) above.

### 8. DELIVERY AND COLLECTION

- (i) Any time or date given by the vendor for deliveries given as an estimate only and the vendor shall not be liable to make good any damage or loss arising directly or indirectly from delay or advance in delivery. Two weeks written notice must be given to the vendor of any change likely to affect delivery for the change to be implemented.
- (ii) The vendor shall arrange for the carriage of the equipment to the customer unless otherwise specified in the order of acknowledgement. The equipment shall beat the customers risk as from the moment of delivery to the customers premises. Claims for loss or damage to the equipment in transit shall be made by the customer directly to the vendor writing three days of receipt of the equipment or, if the equipment is not delivered, within 21 days of the date of the vendors invoice for the equipment.
- (iii) Items may be collected from the vendors premises provided payment is made at the time or a written order has been charged, loan approved credit account beforehand.
- (iv) Part delivery: Each delivery shall be deemed to be a separate contract for the purpose of these conditions. Failure to comply with one or more delivery date shall not be deemed to be a repudiation of the balance of the contract
- (v) The vendor reserves the right to charge storage where the customer delays installation of non standard or special order more than three months after the date of installation requested by the customer. This rate will be 3% above the current bank rate, multiplied by the sales contract value of the goods in storage.
- (v) The customer may be liable for any charges incurred during installation of equipment if any mechanical devices are required to make the physical delivery.

### 9. TRANSFER OF TITLE

Although the customer may acquire possession of the goods, ownership and title shall not pass to the customer until the customer has paid all debts in full due to the vendor and until such time the customer shall:

- 9.1. Hold the goods in fiduciary capacity as agent for the vendor and shall be accountable to the vendor for the proceeds of sale of such goods.
- 9.2. Inform any sub-purchaser that the goods are sold subject to retention of title clause and impose a clause in similar terms to the sub-purchaser providing for the ones rights as in the clause.
- 9.3. Pay the proceeds of sale of goods belonging to the vendor into 5 separate bank accounts
- 9.4. If requested solo do by the vendor produce payment by a sub-purchaser direct to the vendor
- 9.5. In the event of arty breach of this clause, if requested by the vendor, permit the vendor to enter the premises where their equipment and goods are being stored and permit removal of the equipment of goods into the vendors possession.
- 9.6. Until full payment has been received, not sell, charge or otherwise dispose of the equipment (except if ills the express wish of the vendor to do so), keep the equipment safe and insured slits own expense, and return the equipment to the vendor on demand.

### 10. CLAIMS

- 10.1. Any claim by the customer that equipment supplied does not conform to contract must be made in writing within three days of delivery. The equipment concerned shall not be subject to any process nor disposed of until the vendor has had the opportunity to make an inspection and/or test the equipment. The customer should examine the equipment upon delivery and if any items are damaged or missing should State details on the goods received note. Equipment should be signed for 'not examined' unless opened on receipt and found correct. otherwise the vendor cannot accept responsibility.
- 10.2. If the equipment is not found to be defective, the vendors costs of inspection shall be borne by the customer, the vendor shall have option to replace the or credit the customer with their invoiced value or part thereof and this shall be the limit of the vendors liability.
- 10.3. The customer should inform the vendor if goods have not been received within three days of despatch (mainland Africa)

### 11. WARRANTY AND EXCLUSIONS

- 11.1 Zizu Ltd equipment is guaranteed by the manufacturer for the periods shown in Table A from the date of delivery against any manufacturing fault or defecive materials, without any limitation on usage. The delivery date is taken from the date indicated on the delivery note.
- 11.2 This warranty does not affect the statutory rights of the owner of the equipment and is in addition to any other remedies that he or she may have under the contract on sale.
- 11.3 The liability of Zizu Ltd under this warranty is limited to the replacement of parts that in its opinion are defective. These defective parts will be repaired or replaced with new parts, new or reconditioned units as may be reasonable in the circumstances.
- 11.4 The warranty does not cover
  - (i) Any equipment repairs including the installation of parts or accessories that have been carried out by a technician that has not been approved by Zizu Ltd.
  - (ii) Equipment that has not been maintained periodically as detailed in the Operation Manual at the intervals specified.
  - (iii) Modifications or alterations that have been carried out which have neither been provided for nor specified by Zizu Ltd or which have been carried out without complying with the technical instructions Specified by Zizu Ltd.
  - (iv) Equipment that has been vandalised, abused, including overloading or cases where the user has not complied with the instructions given in the Operations Manual.
  - (v) Routine maintenance, periodical checks and adjustments.
  - (vi) The replacement of parts (including all consumable items) subject to normal wear and tear taking into account the usage of the equipment.
  - (vii) Damage by natural elements ( e.g floods) or resulting from accidents.
  - (viii) Any financial loss as a consequence of the equipment being unusable.
- 11.5 Repairs carried out under this warranty do not extend the period of its validity. Parts or units removed ffor replacement under warranty become the property of Zizu Ltd. In the case of a change of ownership, subsequent ownership benefit from the remaining period of the warranty provided that the conditions of application have been followed by the owners.

Table A

Product/Rate	Warranty Period (years)		
	Commercial	Consumer	
Cardovascular	2	2	+ 10 years warranty on structural frame (not coatings) 5 years on the pillow blocks, pulleys, weight plates and guide rods 1 year on linear bearings, cables and grips 90 days on upholstery, springs, belts and any items bot specified.
Strength	2	2	
Rower	2	2	
Entertainment	1	1	
Steam and Sauna	1	1	
Flooring	10	10	

### 12. INVALIDATION

If the customer shall fail to pay the contract price to the vendor on the due date, or if a natural person dies or is subject of an order under the Mental Health Act 1959, or if any distress or execution is levied upon the customers property or assets. If the customer shall offer to make scheme or arrangement with creditors or commit any act of bankruptcy or, being a company has received/manager appointed over any part of its undertakings or assets, or its resolution for the winding up of the company be passed then the vendor may treat all sums due or to become due on arty accounts as immediately payable and suspend or cancel further delivery or require payment in advance or recover any goods which are unsold wherever they are stored, or treat the contract as repudiated by the customer but without prejudice to any other rights of the vendor.

### 13. COSTS

In the event of non payment or other default by the purchaser the vendor shall be entitled to recover at legal cost incurred thereby and interest on the monies outstanding at 03% over the current bank base rate, compounded on a monthly basis.

### 14. WAIVER

Waiver by the vendor of any of these conditions shall not in any way affect the validity of any other conditions herein.

### 15. MISCELLANEOUS

- 15.1 The customer shall not assign arty rights or delegate arty duties hereunder.
- 15.1 The vendor reserves the right to subcontract any or all of its obligations hereunder.
- 15.3 These conditions shall be subject to and construed in accordance with English law and the customer shall submit to the jurisdiction of the Kenya Courts.
- ISA. If any dispute as to the proper interpretation of these cannot be settled by mutual agreement it shall be refered for determination 105 single referee pursuant to the provisions of the Arbitration Act 1950 or any statutory modification thereof and to be appointed in default of agreement by the current president of the Law Society.

### 16. AMENDMENTS

We reserve the right to amend equipment specifications or prices without prior notice.