



A World of Experience in
DIGITAL RADIO

Terms and Conditions of Sale

Document Reference

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Factum Radioscape Terms and Conditions of Sale

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Factum Radioscape Terms and Conditions of Sale

1 APPLICATION AND ENTIRE AGREEMENT

- 1.1 The following terms and conditions are the terms on which Radioscape Ltd. trading as Factum Radioscape sells products and provides services.
- 1.2 The following terms and conditions supersede all other terms and conditions relating to the subject matter of these terms and conditions.

2 DEFINITIONS AND INTERPRETATION

- 2.1 In these terms and conditions, the following words have the following meanings:
 - “**Conditions**”: the Seller’s terms and conditions of sale;
 - “**Seller**”: the entity that sells products and services to the Buyer;
 - “**Buyer**”: the entity that purchases the Goods from the Seller;
 - “**Contract**”: any agreement between the Seller and the Buyer for the sale and purchase of the Goods based upon an offer by the Buyer to purchase Goods that has been accepted in writing by Factum Radioscape;
 - “**Goods**”: any products or services agreed in a Contract to be supplied to the Buyer by the Seller (including any part or parts of them);
 - “**Quotation**”: document that describes the Goods and other information against which the Buyer makes an offer to purchase goods from the Seller;
 - “**Factum Radioscape**”: Radioscape Ltd trading as Factum Radioscape.
- 2.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

3 APPLICATION OF TERMS

- 3.1 Each Contract will incorporate these Conditions to the exclusion of all other standard terms and conditions (including any standard terms or conditions of purchase that may appear on any purchase order, confirmation of purchase order, specification or other document produced by the Buyer).
- 3.2 No standard terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of purchase order, specification or other document will form part of any Contract unless expressly accepted in writing by the Seller.
- 3.3 Each order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 3.4 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 3.5 If the Goods or any component thereof includes the supply of software, notwithstanding any other provision of these Conditions all intellectual property rights in such software shall remain vested in the Seller.

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4 DESCRIPTION

- 4.1 The description of the Goods shall be as set out in the Seller's Quotation or revised Quotation.

5 DELIVERY

- 5.1 Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place Ex-Works or FCA (Incoterms 2000) at the shipment location specified in the Seller's Quotation.
- 5.2 Any dates specified by The Seller for delivery of the Goods are intended to be an estimate and time shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.
- 5.3 Delivery after The Seller's estimated date(s) does not affect or excuse The Buyer from the obligations listed in Section 8 (Payment).

6 RISK AND TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cleared funds) all sums due to it in respect of the Goods.

7 PRICE

- 7.1 The price for the Goods shall be exclusive of any value added tax.

8 PAYMENT

- 8.1 The Seller shall be entitled to invoice the Buyer for each purchase order on or at any time after shipment.
- 8.2 Payment of the price for the Goods is due in cleared funds thirty (30) days from the date of invoice (unless Seller's Quotation indicates that payment is due before delivery of the Goods);
- 8.3 The Buyer shall make all payments due under any Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 8.4 If the Buyer fails to pay the Seller any sum due pursuant to any Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 8.5 The Seller only accepts payment via bank transfer. Further details are provided on The Seller's invoice.

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9 WARRANTY

- 9.1 The Seller warrants that (subject to the other provisions of these Conditions) upon delivery and for a period of 24 months thereafter the Goods will comply with the material express requirements contained in any agreed specification forming part of the related Contract or, in the absence of such specification, be of satisfactory quality within the meaning of the Sale of Goods Act 1994.
- 9.2 If any of the Goods do not conform with the warranty contained in condition 9.1 the Seller shall at its option repair or replace such Goods (or the defective part thereof) or refund the price of such Goods at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at the Seller's expense, return the Goods or the part of such Goods which is defective to the Seller.
- 9.3 If the Seller complies with condition 9.2 it shall have no further liability for a breach of the warranty contained in condition 9.1 in respect of such Goods.

10 LIMITATION OF LIABILITY

- 10.1 Subject to Conditions 9 and 10.3, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these Conditions; and
- 10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with any Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from all Contracts.
- 10.3 Subject to conditions 10.2:
- 10.3.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of any Contract shall be limited to an amount equal to the purchase price for the Goods stipulated in that Contract; and
- 10.3.2 the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with any Contract.

11 ASSIGNMENT

- 11.1 The Buyer shall not be entitled to assign any Contract (in whole or in part) without the express prior written consent of the Seller.

12 FORCE MAEJURE

12.1 the Seller reserves the right to defer the date of delivery or to cancel a Contract (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of ninety (90) days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the affected Contract.

13 GENERAL

- 13.1 Each right or remedy of the Seller under a Contract is without prejudice to any other right or remedy of the Seller whether under that Contract or not.
- 13.2 If any provision of a Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of that Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of a Contract will not be construed as a waiver of any of its rights under that or any other Contract.
- 13.4 Any waiver by the Seller of any breach of, or any default under, any provision of a Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of that or any other Contract.
- 13.5 The parties to a Contract do not intend that any term thereof will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of any Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14 NOTICES

- 14.1 The communication of a notice from one party to a Contract to the other must be in writing via email, delivered by hand or sent by pre-paid first-class post.
- 14.2 Notices shall be deemed to have been received:
- 14.2.1 If delivered by email, within 24 hours (excluding Saturdays, Sundays and bank and public holidays) in addition to a confirmation phone-call from The Buyer.
 - 14.2.2 if sent from within the UK to a UK address by pre-paid first-class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
 - 14.2.3 if delivered by hand, on the day of delivery.
- 14.3 Notices addressed to the Seller shall be marked for the attention of the Seller's Commercial Director.