# GENERAL TERMS AND CONDITIONS

**1. SCOPE**

These General Terms and Conditions shall apply to all goods and services distributed by ONLEVEL to the customer, including application-oriented advice and consulting customer.

**2. CONTRACT, RESERVATION OF CHANGES, MINIMUM ORDER VALUE, QUOTATION DOCUMENTS, ETC.**

2.1 All information and specifications in catalogues, flyers or other documents are non-binding. Contracts between ONLEVEL and their customers are accepted via order confirmations sent by ONLEVEL in written or electronic form, by email or fax. The order confirmation is conclusive evidence of formation of the contract. If ONLEVEL delivers goods without prior order confirmation, the contract shall be deemed effective upon the beginning of the service or delivery of the ordered goods.

2.2 If the ordered goods are no longer available or have been replaced, ONLEVEL reserves the right to deliver similar product(s) of a similar or improved quality.

**3. PRICES, TERMS OF PAYMENT**

3.1 All prices are quoted "ex works" Emmerich/Manchester, plus VAT. Shipping and freight charges, insurance, taxes, packaging costs and possible installation costs are not included. If the order value is below a net product value of £ 250, a handling fee per shipment of £ 20 shall apply.

3.2 ONLEVEL reserves the right to amend catalogue prices at any time. The respective list prices at the time of the order are binding unless the price for the goods has been agreed at a higher price within the order confirmation in which case the higher price shall be binding. customer

3.3 ONLEVEL may, by giving notice to the customer at any time before delivery, increase the price of the goods to reflect any increase in the cost of the goods that is due to:

(a) any factor beyond ONLEVEL's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the customer to change the delivery date(s), quantities or types of goods ordered, or the specification; or

(c) any delay caused by any instruction or lack of instruction of the customer or failure of the customer to give ONLEVEL adequate or accurate information or instructions.

(d) failure by the customer to accept delivery of the goods.

3.4 The purchase price is payable either by electronic bank transfer or by irrevocable, confirmed letter of credit issued to ONLEVEL's indicated bank, unless agreed otherwise in the order confirmation. All bank charges outside Germany are for the account of the customer. ONLEVEL covers all bank charges inside the UK. If the customer is overdue in making the payment, ONLEVEL is entitled to demand default interest of 5% above the Bank of England base lending rate from time to time.

3.5 Save where ONLEVEL requires pre-payment for the goods, all amounts due under the contract shall be paid in full within 13 days of delivery without any right of set off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

3.6 ONLEVEL reserve the right to supply their goods only on pre-payment or by cash on delivery.

**4. DELIVERY, DELIVERY TIME***

4.1 All deliveries shall be made "ex works" Emmerich/Manchester according to Incoterms 2010.

4.2 Partial deliveries are permissible if not all ordered goods are available and in so far as the customer can be reasonably expected to accept such partial deliveries. ONLEVEL reserves the right to invoice and request payment of such partial deliveries separately.

4.3 In the event of a partial delivery as in clause 4.2, any delay in delivery or defect in an instalment shall not entitle the customer to cancel any other instalment of goods pending.

4.4 Delivery or performance dates in relation to the supply by ONLEVEL of goods are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery of the Goods.

4.5 ONLEVEL shall not be in breach of the contract nor liable for delay in performing, or failure to perform, any of its obligations under the contract if such delay or failure results from an event, circumstance or cause beyond their control including but not limited to ("Force Majeure Event"). In such circumstances ONLEVEL shall be entitled to a reasonable extension of the time for performing its obligations. If the period of delay or non-performance continues beyond such reasonable extension, the party not affected may terminate this agreement by giving written notice to the affected party.

4.6 Time of delivery for the purposes of this clause shall be the day when the delivery or partial delivery is made available for collection or shipment or the day the goods are handed over to the forwarding agent.

**5. TRANSFER OF RISK, SHIPMENT**

5.1 Risk and responsibility for the goods shall pass to the customer once they have been delivered in accordance with clause 4 of these terms.

5.2 If the customer delays in accepting the service or infringes other cooperation duties, the risk of accidental loss or deterioration of the goods will pass to the customer at the moment in which his delay in acceptance commences.

5.3 The selection of the mode of despatch, packing and shipment shall be reserved to ONLEVEL.

5.4 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the goods as are required from time to time and, if required by ONLEVEL, the customer shall make those licences and consents available to ONLEVEL prior to the relevant shipment.

**6. PACKAGING**

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6.1 The price of the goods excludes the costs and charges of packaging, insurance and transport of the goods, which shall be invoiced to the customer.

6.2 The customer shall be responsible for the disposal of all packaging.

6.3 All packaging materials are to be disposed of by the customer in a recyclable and environmentally friendly way customer

**7. RETURN OF GOODS**

7.1 The Customer shall, within seven days of the arrival of each delivery of the Goods at the Delivery Point, give written notice of rejection to the ONLEVEL on account of any defect by reason of which the Customer alleges that the Goods delivered do not comply with the Warranty and which was apparent on reasonable inspection.

7.2 If the Customer fails to give notice as specified in clause 7.1 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Warranty and, accordingly, the Customer shall be deemed to have accepted the delivery of the Goods in question and the ONLEVEL shall have no liability to the Customer with respect to that delivery (except in relation to liability for any latent defects).

7.3 If the Customer alleges that any Goods are defective, it shall, if so requested by the ONLEVEL, return the relevant Goods (unaltered and unrepaired) to the ONLEVEL for inspection as soon as possible and at its own risk and expense.

7.4 If the Customer rejects any delivery of the Goods which do not comply with the Warranty, the ONLEVEL shall, within seven days of the ONLEVEL accepting that the Goods do not comply with the Warranty:

(a) supply replacement Goods which comply with the Warranty, in which event the ONLEVEL shall be deemed not to be in breach of this agreement or have any liability to the Customer for the rejected Goods; or

(b) notify the Customer that it is unable to supply replacement Goods, in which case the Customer shall be entitled to obtain from any other person such quantity of the Goods only as the ONLEVEL has been unable to supply and the ONLEVEL shall grant to the Customer a credit equal to the value of the Goods which the ONLEVEL agrees do not comply with the Warranty.

7.5 ONLEVEL's decision as to whether the Goods comply with the Specification shall be final.

**8. WARRANTY**

8.1 ONLEVEL warrants that the goods sold by it will conform in all material respects to their published specifications from time to time. All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose are excluded from this agreement to the fullest extent permitted by law.

**9. LIABILITY**

9.1 ONLEVEL's total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to the contract shall be limited to the aggregate amounts paid by the Customer for goods (excluding Expenses) during the previous 11 months, or, if the date of the breach is less than 11 months, the aggregate of the amounts paid by the customer over the period since the since the first delivery pro-rated to the equivalent of a 11–month period.

9.2 Other than as set out in clause 13.7 and clause 13.8 ONLEVEL shall not be liable to the Customer for:

(a) any indirect, special or consequential loss or damage; or

(b) loss of data or other equipment or property; or

(c) economic loss or damage; or

(d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or

(e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,

even if ONLEVEL is advised in advance of the possibility of any such losses or damages.

9.3 ONLEVEL shall not be liable for any losses arising from the customer's subsequent use or misuse of the goods including (without limitation):

(a) fair wear and tear;

(b) wilful damage;

(c) the Customer's negligence, or that of its agents or employees, or any failure to follow ONLEVEL's instructions as to use of the goods;

(d) abnormal working conditions beyond those referred to in the Specification; and

(e) any alteration or repair of the Products by any manufacturing process or otherwise, save for any latent defect which means that the goods did not comply with the Specification.

9.4 ONLEVEL is not liable for a defect in the goods unless it is notified to ONLEVEL within 7 days of the date of delivery in accordance with clause 7.1 or in the case of latent defects not discoverable on reasonable inspection within 21 days of the date of delivery.

9.5 ONLEVEL is not liable for:

(a) non-delivery, unless the customer notifies ONLEVEL of the claim within 7 working days of the date of invoice; or

(b) shortages in the quantity of Products delivered in excess of those permitted by clause 4, unless the Customer notifies ONLEVEL of a claim within 15 working days of receipt of the goods; or

(c) damage to or loss of all or part of the goods in transit (where the goods are carried by the ONLEVEL's own transport or by a carrier on behalf of ONLEVEL), unless the customer notifies ONLEVEL

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within 7 working days of receipt of the Goods or the scheduled date of delivery, whichever is the earlier.

**10. RETENTION OF OWNERSHIP**

10.1 Ownership of the goods shall not pass to the Customer until ONLEVEL has received payment in full of all monies due from the customer under the contract.

10.2 Until ownership of the Goods passes to the Customer, the Customer shall hold the Goods on the following terms:

(a) the Goods shall be stored separately from other goods held by the Customer and shall be clearly identifiable as the property of the ONLEVEL;

(b) the Goods shall not be mixed with other goods or altered in any way;

(c) the Goods shall be adequately stored and maintained in a satisfactory condition; and

(d) each Product shall be insured for an amount at least equal to its List Price and any proceeds of the insurance policy shall be held on trust for ONLEVEL in a separate account in the joint names of the ONLEVEL and the Customer. The Customer shall not mix the insurance proceeds with any other money or pay the proceeds into an overdrawn bank account. (e) The Customer shall account to the ONLEVEL for the proceeds accordingly and make good any shortfall in the amount due to the ONLEVEL.

10.3 The Customer may resell (but may not deal in any other way with) the Goods to a third party and pass good title to that third party on the following terms:

(a) the sale is in the ordinary course of the Customer's business; and

(b) the Customer holds the proceeds of any resale on trust for the ONLEVEL in a separate account in the joint names of the ONLEVEL and the Customer and does not mix them with any other money or pay the proceeds into an overdrawn bank account.

The Customer shall account to the ONLEVEL for the proceeds accordingly and shall make good any shortfall in the amount due to the ONLEVEL.

10.4 The Customer shall lose its rights to possession and resale of the Goods if:

(a) the Customer becomes subject to any of the events in clause 11; or

(b) this agreement terminates and the Customer does not pay all outstanding amounts under this agreement within 13 days; or

(c) the Customer suffers any legal or equitable execution to be levied on its property.

10.5 The Customer grants to ONLEVEL an irrevocable licence for ONLEVEL, its agents and employees to enter any premises where the goods of the Customer are stored to ascertain whether any Goods are stored there and to inspect, count and recover them.

10.6 The Customer shall register any necessary charge over money or goods and take such other steps as are necessary to give effect to this clause 10 at the request of the ONLEVEL.

**11. TERMINATION**

11.1 Without limiting its other rights or remedies, ONLEVEL may terminate this contract with immediate effect by giving written notice to the customer if:

(a) the customer commits a material breach of any term of the contract and (if such a breach is remediable) fails to remedy that breach within 13 days of that party being notified in writing to do so;

(b) the customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

(c) the customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the customer's financial position deteriorates to such an extent that in the opinion of ONLEVEL the customer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy.

11.2 Without limiting its other rights or remedies, ONLEVEL may suspend provision of the goods under the contract or any other contract between the customer and ONLEVEL if the customer becomes subject to any of the events listed in clause 11.1(a) to clause 11.1(d), or ONLEVEL reasonably believes that the customer is about to become subject to any of them, or if the customer fails to pay any amount due under this contract on the due date for payment.

11.3 Without limiting its other rights or remedies, ONLEVEL may terminate the contract with immediate effect by giving written notice to the customer if the customer fails to pay any amount due under the contract on the due date for payment.

11.4 On termination of the contract for any reason the customer shall immediately pay to ONLEVEL all of the outstanding unpaid invoices and interest and, in respect of goods supplied but for which no invoice has been submitted, ONLEVEL shall submit an invoice, which shall be payable by the customer immediately on receipt.

11.5 Termination of the contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the contract which existed at or before the date of termination.

11.6 Any provision of the contract that expressly or by implication is intended to come into or continue in force on or after termination of the contract shall remain in full force and effect.

**12. DATA PROTECTION**

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The customer acknowledges that under the Data Protection Act, personal data obtained from the contractual relationship are stored by ONLEVEL for the purpose of data processing. No data will be passed on to third parties.

**13. INTELLECTUAL PROPERTY RIGHTS**

In this clause Intellectual Property Rights shall mean: all patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world in or associated with the Goods.

13.1 The Customer acknowledges that:

(a) the Intellectual Property Rights are the property of ONLEVEL (or its licensor's);

(b) nothing in this agreement shall be construed as conferring any licence or granting any rights in favour of the customer in relation to the Intellectual Property Rights. ONLEVEL asserts its full rights to control the use of its trademarks within the EEA and worldwide and the customer shall assist the ONLEVEL as required in preventing parallel importers from diluting the ONLEVEL's rights; and

(c) any reputation in any trademarks affixed or applied to the goods shall accrue to the sole benefit of the ONLEVEL or any other owner of the trade marks from time to time.

13.2 The Customer shall not repackage the Goods and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods save for any removal which is a necessary result of a manufacturing process of which the ONLEVEL has been previously notified in writing by the customer.

13.3 The customer shall not use (other than pursuant to this agreement) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the ONLEVEL or any associated company of ONLEVEL owns or claims rights in anywhere in the world.

13.4 If at any time it is alleged that the Goods infringe the rights of any third party or if, in the ONLEVEL's reasonable opinion, such an allegation is likely to be made, the ONLEVEL may at its option and its own cost:

(a) modify or replace the Goods in order to avoid the infringement; or

(b) procure for the customer the right to continue using the goods; or

(c) repurchase the goods at the price paid by the customer, less depreciation at the rate that ONLEVEL applies to its own equipment.

13.5 The customer shall promptly and fully notify ONLEVEL of:

(a) any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Customer's notice; and

(b) any claim by any third party that comes to the customer's notice that the sale or advertisement of the Goods infringes the rights of any person.

13.6 The Customer agrees (at ONLEVEL's request and expense) to do all such things as may be reasonably required to assist the ONLEVEL in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 13.5.

13.7 In the event of any claim, proceeding or suit by a third party against the customer alleging an infringement of any Intellectual Property Right connected with the goods, ONLEVEL shall defend the customer at the ONLEVEL's expense, subject to:

(a) the customer promptly notifying the ONLEVEL in writing of any such claim, proceeding or suit; and

(b) ONLEVEL being given sole control of the defence of the claim, proceeding or suit,

and provided that the ONLEVEL shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the goods made by anyone except ONLEVEL or its authorised representative, or out of use or combination of the goods with goods or third party materials not specified or expressly approved in advance in writing by ONLEVEL, or where the claim, proceeding or suit arises from ONLEVEL's adherence to the customer's requested changes to the specification or from infringing items of the customer's origin, design or selection.

13.8 ONLEVEL shall reimburse the customer with an amount equal to any reasonable cost, expense or legal fees incurred at ONLEVEL's written request or authorisation.

**14. VARIATION**

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**15. SEVERANCE**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this Clause 15 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**16. PLACE OF PERFORMANCE, COURT OF JURISDICTION, APPLICABLE LAW**

16.1 At the option of ONLEVEL, the place of performance shall either be the competent court of jurisdiction for the ONLEVEL headquarters or the customer´s headquarters, in so far as the

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customer is a merchant, an entity of public law or special funds of public law.

16.2 The place of performance for delivery shall be the place where the goods are stored for the purpose of being despatched or handed over to the customer. The place of performance for paying the purchase price and for fulfilling all other contractual obligations shall be Emmerich/Manchester.

16.3 For all legal relationships and disputes between the contractual parties arising from this contract, the English Law of Contract shall apply exclusively, excluding the UN Sales Convention.

***Please note that it is the recipient's responsibility to check each delivery for damages to the packaging. Any damaged parcels must be signed for as damaged at the time of delivery; unfortunately, OnLevel Ltd will not take any responsibility for parcels not checked at the time of delivery.**