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Standard Terms and Conditions of Sale – Analox Military Systems

Please read these terms and conditions carefully, as they contain important information about your rights and obligations. You can print out these terms and conditions by clicking on the print icon on your browser.

The Customer's attention is specifically drawn to clause 11 (Limitation of Liability).

1 Applicable Terms

- 1.1 These Conditions apply to all sales of goods and services by Analox including but not limited to telephone sales, mail order sales and over the counter sales.
- 1.2 These Conditions apply to all sales of goods and services by Analox.

2 Interpretation

2.1 Definitions

In these Conditions, the following definitions apply:

Analox:	Analox Military Systems Limited, a company registered in England and Wales with company number 05768994.
Conditions:	the terms and conditions set out in this document as amended from time to time.
Confirmation:	the email or fax sent by Analox to the Customer confirming acceptance of the Order.
Contract:	the contract between Analox and the Customer for the sale and purchase of the Goods or Services in accordance with these Conditions.
Customer:	the person or firm who purchases the Goods from Analox.
Dispatch Confirmation:	the email sent by Analox to the Customer that confirms that the Goods have been dispatched.
Goods:	the goods (or any part of them) set out in the Contract.



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Intellectual Property Rights:	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Order:	the customer's order for the Goods or Services whether in the customer's purchase order form, the Customer's written acceptance of Analox's quotation or otherwise.
Services:	the Services (or any part of them) set out in the Contract.
Specification:	any specification for the Goods (including any related plans and drawings) that is supplied to Analox by the Customer, or produced by Analox and agreed in writing by the Customer.
Warranty Period:	the warranty period for each particular Analox product shown on the list at www.analoxmilitarysystems.co.uk . A hard copy of the current Analox product warranty list will be supplied on request.
Website:	the Analox website at www.analoxmilitarysystems.co.uk .

2.2 Construction

In these Conditions, the following rules apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to writing or written includes faxes and e-mails.
- (f) A reference to any International Chamber of Commerce standard terms of trade shall be to the terms contained in Incoterms 2010.

3 Basis of contract



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- 3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.2 The Order constitutes an offer by the Customer to purchase the Goods or Services in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specifications are complete and accurate.
- 3.3 The Order shall only be deemed to be accepted when Analox issues the Confirmation, despatches the Goods or commences the Services, at which point the Contract between Analox and the customer will be formed.
- 3.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Analox which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by Analox and any descriptions or illustrations contained in Analox's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between Analox and the Customer for the sale of the Goods or Services.
- 3.5 A quotation for the Goods or Services given by Analox shall not constitute an offer. A quotation shall only be valid for a period of 60 working days from its date of issue.

4 Delivery

- 4.1 The Order will be fulfilled by the delivery date set out in the Confirmation or Contract or, if no delivery date is specified, then within 30 days of the date of the Confirmation, unless there are exceptional circumstances.
- 4.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Analox shall not be liable for any delay in delivery of the Goods or Services that is caused by a Force Majeure event or the Customer's failure to provide Analox with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or the provision of Services.
- 4.3 Analox shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows all relevant Customer and Analox reference numbers and the type and quantity of the Goods (including the code number of the Goods, where applicable); and
 - (b) if Analox requires the Customer to return any packaging materials, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Analox shall reasonably request. Returns of packaging materials shall be at Analox's expense.
- 4.4 If Analox fails to deliver the Goods or Services, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods or Services. Analox shall have no liability for any failure to deliver the Goods or Services to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Analox with adequate delivery instructions, any other instructions that are relevant to the supply of the Goods or Services, or any delay resulting from the actions or omissions of any customs or similar authority whether in the UK or elsewhere.



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- 4.5 If Analox is unable to deliver the whole of the Goods or Services at one time due to operational reasons or shortage of stock it will deliver the Goods or Services in 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 Customer to cancel any other instalment.
- 4.6 If the Customer requests Analox to deliver the Goods or Services in instalments, Analox may charge the Customer extra delivery costs or reasonable expenses for travel and subsistence as appropriate. Each instalment shall constitute a separate Contract. If Analox is late delivering an instalment or one instalment is faulty, that will not entitle the Customer to cancel any other instalment.
- 4.7 All deliveries will be shipped Ex Works (EXW) in accordance with Incoterms 2010.
- (a) Where Analox quotes a carriage option, and the Customer elects to proceed with this option, the Goods will be shipped Free Carrier (FCA) in accordance with Incoterms 2010.

5 Quality

- 5.1 Analox warrants that on delivery, and for the Warranty Period, the Goods or Services shall:
- (a) conform in all material respects with their description and any applicable Specification;
- (b) conform in all material respects with any calibration set out in any test certificate issued with the Goods;
- (c) be free from material defects in design, material and workmanship;
- 5.2 The Customer shall not return any Goods to Analox unless it has first obtained a Returns Reference number (**RR number**) from Analox. An RR number can be obtained from Analox by calling +44(0)1642 715917 between the hours of 09:00 and 17:00 Monday to Thursday and 09.00 and 15.00 Friday (UK time). Analox will not be liable for delays caused by Goods being returned without an RR number.
- 5.3 Subject to clause 5.4, if:
- (a) the Customer gives notice in writing (to include the RR number, the Customer's contact information and shipping address and details of the claimed defect) to Analox during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
- (b) the Customer when requested to do so by Analox returns the Goods at its own cost for the purpose of inspection by Analox,

Analox shall, if the Goods are defective, at its option:

- (i) provide the Customer with a full refund of the price of those Goods; or
- (ii) replace the Goods; or
- (iii) repair the Goods; and



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(iv) pay any costs of re-delivery,

provided that for Goods marked "Graded" or otherwise indicated on the then current Analox product warranty list as having a time reducing warranty the refund terms set out in that list shall apply.

5.4 Analox shall not be liable for Goods failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clauses 5.2 and 5.3; or
- (b) the defect arises because the Customer failed to follow Analox'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; or
- (c) the defect arises as a result of Analox following any drawing, design or specification supplied by the Customer; or
- (d) the Customer alters or repairs such Goods without the written consent of Analox; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

5.5 If following inspection by Analox, it is determined that returned Goods are not defective, the costs of inspection including disassembly and reassembly and re-delivery shall be paid by the Customer.

5.6 If Goods cannot, in Analox's reasonable opinion, be returned for inspection, Analox shall attend the site for inspection purposes subject to payment in advance by the Customer of Analox's reasonable estimate of its reasonable expenses for travel and subsistence and satisfaction of any reasonable conditions Analox may imply regarding site and personnel safety.

5.7 Except as provided in this clause 5, Analox shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.8 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.9 These Conditions shall apply to any repaired or replacement Goods supplied by Analox.

6 Title and Risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until Analox has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) all other sums which are or which become due to Analox for sales of the Goods or any other products to the Customer.



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- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as Analox's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Analox's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify Analox immediately if it becomes subject to any of the events listed in clause 9.2; and
 - (f) give Analox such information relating to the Goods as Analox may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 6.4 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 9.2, or Analox reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Analox may have, Analox may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 Repairs

- 7.1 Where Goods are returned for repairs outside of the Warranty Period:

- (a) The Customer must comply with the requirements of clause 5.2; and
- (b) Where the Customer elects not to proceed with the repairs, an inspection fee will be levied; and
- (c) Where the Customers elects to proceed with the repairs, the repair work will carry a 90 day warranty.

8 Price and Payment

- 8.1 The price of the Goods or Services shall be the price set out in the Contract, or, if no price is quoted, the price set out in Analox's published price list in force as at the date of delivery.
- 8.2 Analox may, by giving notice to the Customer at any time up to 30 working days before delivery, increase the price of the Goods or Services to reflect any increase in the cost of the Goods or Services that is due to:
- (a) any factor beyond Analox's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);



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- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods or Services ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Analox adequate or accurate information or instructions.
- 8.3 The price for the Goods is exclusive of the costs and charges of any packaging, insurance and carriage of the Goods, which shall be set out in the Contract and paid by the Customer when it pays for the Goods.
- 8.4 The price of the Goods or Services is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Analox, pay to Analox such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.5 Invoicing
- (a) Analox may invoice the Customer for the Goods on or at any time after the time of despatch from Analox; or in the case of Services, on or at any time after the completion of the Services; and
 - (b) The Customer shall pay the invoice in full and in cleared funds by the due date on the invoice. Payment shall be made to the bank account nominated in writing by Analox; and
 - (c) time of payment is of the essence.
- 8.6 Payment for all Goods or Services must be made in full with the Order. Payment may be by credit card or debit card, cheque, banker's draft, BACS and CHAPS. Credit accounts will only be offered where Analox can secure credit insurance from its regular insurer and Analox's decision will be final.
- 8.7 If the Customer fails to make any payment due to Analox under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.8 Notwithstanding clause 8.7, Analox may in the alternative claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Analox in order to justify withholding payment of any such amount in whole or in part. Analox may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Analox to the Customer.
- 8.10 Without limiting any other remedies or rights that Analox may have, if the Customer does not pay Analox on time, Analox may cancel or suspend any other outstanding Order until the customer has paid the outstanding amounts.

9 Import Duty



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- 9.1 If the Customer orders Goods from Analox for delivery outside the UK, they may be subject to import duties and taxes which are levied when the delivery reaches the specified destination. The Customer will be responsible for payment of any such import duties and taxes. Analox has no control over these charges and cannot predict their amount. The Customer should contact its local customs office for further information before placing its Order.
- 9.2 Customer should note that they must comply with all applicable laws and regulations of the country for which the Goods are destined. Analox will not be liable for any breach by the Customer of any such laws.

10 Customer's Insolvency or Incapacity

- 10.1 If the Customer becomes subject to any of the events listed in clause 9.2, or Analox reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Analox, Analox may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Analox without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 10.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Customer 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) 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; or
 - (b) the Customer 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 other than (where the Customer is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
 - (c) (being an individual) the Customer is the subject of a bankruptcy petition or order; or
 - (d) a creditor or encumbrancer of the Customer 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; or
 - (e) (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 Customer; or
 - (f) (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
 - (g) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or



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- (h) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(g) (inclusive); or
- (i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- (j) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Customer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- (k) (being an individual) the Customer 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.

11 Limitation of Liability

11.1 Nothing in these Conditions shall limit or exclude Analox's liability for:

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

11.2 Subject to clause 10.1:

- (a) Analox shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and
- (b) Analox's total liability to the Customer 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 not exceed [150]% of the price of the Goods or Services.

12 Intellectual Property

12.1 All Intellectual Property Rights in or arising from the supply of the Goods or Services including but not limited to drawings, designs and other materials provided with any quotation or set out in any Contract shall be owned by Analox unless the parties otherwise agree in writing.

12.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Analox obtaining a written licence from the relevant licensor on such terms as will entitle Analox to license such rights to the Customer.

13 Events outside Analox control



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- 13.1 Analox will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under these Conditions that is caused by events outside its reasonable control (**Force Majeure Event**).
- 13.2 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond Analox's reasonable control and includes, in particular (without limitation), the following:
- (a) strikes, lock-outs or other industrial action; or
 - (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; or
 - (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or
 - (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; or
 - (e) impossibility of the use of public or private telecommunications networks.
- 13.3 Analox's obligations under these Conditions are suspended for the period that the Force Majeure Event continues, and Analox will have an extension of time to perform these obligations for the duration of that period. Analox will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which its obligations under these Conditions can be performed despite the Force Majeure Event.

14 General

14.1 Assignment and subcontracting

- (a) Analox may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Analox.

14.2 Notice

- (a) All notices sent by the Customer to Analox must be sent to Analox Military Systems Limited at 15 Ellerbeck Court, Stokesley Business Park, Stokesley, North Yorkshire TS9 5PT or info@analox-military.net.
- (b) Analox may give notice to the Customer at any of the fax number or the email or postal address provided by the Customer in the Order.

14.3 Severance

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



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14.4 Waiver

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14.5 Third Party Rights

Except as specifically provided in these Conditions, a person who is not a party to the Contract shall not have any rights under or in connection with it.

14.6 Governing Law and Jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Analox Military Systems Limited



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