



EC ELECTRONICS
manufacturing services

Terms of Sale

1. Interpretation

In these Conditions, the following terms shall have the following meanings:

'BUYER' means the person whose order for the Goods is accepted by the Seller;

'GOODS' means the products, which the Seller is to supply in accordance with these Conditions;

'SELLER' means EC Electronics Ltd whose office is registered at Unit 4 Newton Court Rankine Road Basingstoke Hampshire RG24 8GF, Company No. 03573232;

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

'CONTRACT' means the contract for the purchase and sale of the Goods, which shall in all cases be governed by the Conditions;

'INCOTERMS' means the Incoterms 2000, being the current international rules for the interpretation of trade terms of the International Chamber of Commerce; and

'WRITING' includes facsimile transmission and comparable means of communication

2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation of the Seller, which is accepted by the Buyer, or any written or verbal order of the Buyer which is accepted by the Seller, which shall in any event be subject to these Conditions. These Conditions shall prevail over any other purported terms and conditions, whether on purchase orders or otherwise.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller. Otherwise, the employees or agents of the Seller are not authorised to make any representations or vary the Contract in any way.

2.3 Any quotation for Goods given by the Seller shall be valid for a period of 30 days only from the date of its issue, and if not accepted within that period shall be deemed withdrawn.

3. Orders

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order and for giving the Seller any necessary information and necessary materials in good time to enable the Seller to perform the Contract. No order submitted by the Buyer shall be deemed accepted by the Seller unless and until confirmed in Writing by the Seller.

- 3.2 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller. In the event that cancellation is accepted, it shall be conditional upon the Buyer paying the full costs of the Goods and time spent to fulfil any Contract up to the effective date of cancellation, including without limitation the cost of design work, tool, dies, special equipment etc purchased or manufactured specifically for execution of the Contract in question.
- 3.3 Each delivery of Goods shall be considered a separate Contract for the purposes of this Clause 3.
- 3.4 It shall be the Buyer's duty, when supplying the Seller with specifications or designs to which the Seller shall manufacture Goods, or materials for the Seller to use in manufacturing the Goods, to ensure the accuracy and completeness of such specifications and, designs and the quality of such materials, and the interoperability of any manufactured Goods with any other products of the Buyer. The Seller shall have no liability in this regard.

4. Price of the Goods

- 4.1 The price of the goods shall be the Seller's quoted price.
- 4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller such as fluctuation in relevant exchange rates or the increased cost of materials and/or wages.
- 4.3 The price is given on an ex works basis and is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller. The price also does not include any insurance charges. If the Seller agrees to arrange for insurance, all costs shall be re-charged to the Buyer.

5. Terms of Payment

- 5.1 The Seller shall be entitled to invoice the Buyer for the price of all Goods supplied on or at any time after delivery of the Goods.
- 5.2 Notwithstanding clause 5.1, the Seller shall be entitled at any time prior to delivery of the Goods to invoice in part for the Goods if there is any delay:
- a) in the Buyer sending any materials or information necessary for the Seller to perform the Contract; or
 - b) in delivery caused by the Seller's suppliers.
- 5.3 The Buyer shall pay the price of the Goods within 30 days from end of the month in which the Goods are delivered, unless otherwise stated in Writing and agreed by both parties. Any proforma invoices issued pursuant to clause 5.2 or clause 5.7 shall be payable immediately on receipt. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, all invoices issued by the Seller to the Buyer shall immediately become due and payable and the Seller shall be entitled (i) to cancel the contract or suspend any further deliveries to the Buyer, (ii) appropriate any payment made by the Buyer to the Seller under any other contract between them to such Goods as the Seller may think fit, notwithstanding any purported appropriation of any payment by the Buyer, and (iii) charge the Buyer the full cost of recovery of sums outstanding as well as interest in accordance with Clause 5.5 below.
- 5.5 In the event of any late payment, the Seller shall also be entitled to charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2.5 per cent per month (such interest to be compounded on a monthly basis) from the time payment fell due until the time payment is actually received in cleared funds by the Seller.

- 5.6 Payments shall be made by the Buyer without any deduction whatsoever, whether by set-off, counter-claim or otherwise.
- 5.75.6 Where the Buyer has consistently been paying invoices behind the agreed payment terms, the Seller reserves the right to require payment in advance for any future Orders and to issue pro-forma invoices.

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place at the Buyer's cost, unless otherwise agreed with the Seller in advance.
- 6.2 While every reasonable effort will be made to fulfil delivery dates, any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused but the following provisions shall have effect:
- 6.2.1 delivery is subject to the relevant lead-times on components that may need to be ordered by the Seller to enable it to manufacture the Goods;
 - 6.2.2 time for delivery shall not be of the essence of the Contract;
 - 6.2.3 in the event that the delay exceeds 180 days after the agreed delivery date, the parties shall meet to discuss a revised date for delivery. In absence of any agreement, the Buyer shall be entitled to terminate or rescind the Contract in so far as it relates to the delivery consignment in question;
 - 6.2.4 the foregoing provisions shall be the Buyer's exclusive remedy in respect of such delay in delivery.
- 6.3 The Buyer has full responsibility for inspecting the Goods upon delivery, and a delivery note signed by the representative of the Buyer shall constitute full acceptance by the Buyer of the Goods. The Buyer shall only be entitled to make a claim for defective Goods in accordance with clause 8.5. For the avoidance of doubt, a delivery note which is signed as unchecked will be deemed rejected by the Seller.
- 6.4 If, on delivery, the Buyer finds that some of the Goods fail to meet with agreed standards, and as a result the Buyer wishes to reject the Goods, then (i) any rejection of the Goods must be in accordance with these Conditions and (ii) the Buyer shall not be entitled to reject the whole delivery consignment, but only that percentage of the Goods which is sub-standard.
- 6.5 The Seller reserves the right to make instalment deliveries of the Goods ordered under each Contract. If Goods are delivered in instalments, the Seller shall be entitled to invoice for each instalment as and when that instalment is delivered, and payment shall be due in respect of each instalment delivered notwithstanding non-delivery of the other instalments.
- 6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions (including a correct delivery address) to ensure delivery in accordance with these Conditions, then, without prejudice to any other right or remedy that the Seller may have, the Seller may (i) store the Goods until actual delivery is made to the Buyer and charge the Buyer for its costs (including insurance) of storage and (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.7 All cases supplied and charged for will be credited in full if return carriage is paid, in good condition, to the Seller, within 14 days from the date of the invoice and the Seller is duly advised of the return of such cases.

7. Risk and Property

- 7.1 Risk of damage or loss of the Goods shall pass to the Buyer on delivery to the Buyer or on the collection of the Goods from the Seller's premises by the Buyer or its representative.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course its business.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the Seller's property. However, if the Buyer should do so in breach of this obligation, all sums owing by the Buyer to the Seller (without prejudice to any of the Buyer's other rights or remedies) shall immediately become due and payable.
- 7.6 All designs, tools, dies etc used in the manufacturing process remain the Seller's property, whether or not a charge is made towards their cost. However, if this has been specifically agreed between the Buyer and the Seller in advance (and provided all payments in relation to the order concerned have been received in full by the Seller), then property in the relevant tools or dies shall be passed to the Buyer. However, no ownership of any intellectual property that the Seller may develop (whether in the form of copyright, designs, know-how or other similar rights of whatever nature) in the course of fulfilling any Orders shall be deemed to pass to the Buyer unless specifically assigned by written agreement.

8. Warranties and Liabilities

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will be free from defects in material and workmanship and will correspond in all material respects with their order specification at the time of delivery and for a period of six months following delivery. This warranty does not apply (without limitation) in relation to:-
- (a) any faults in the Goods due to their order specification, or to materials supplied by the Buyer;
 - (b) any mis-use of the Goods by Customer or any end user or any further use of the Goods after discovery of any defect;
 - (c) any damage or faults due to assembly of Goods with other goods;
 - (d) the choice of components for the Goods.
- 8.2 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law or otherwise in any way, whether as to quality, fitness for purpose or otherwise, (save for the conditions implied by section 12 of the Sales of Goods Act 1979) are excluded to the fullest extent permitted by law.

- 8.3 If Goods are manufactured to the Buyer's design or specification, the Buyer warrants that it has all necessary rights to instruct the Buyer to do so, and the Buyer will indemnify the Seller against all claims, damages, losses, costs and liabilities in respect of any claim made by a third party against the Seller that the design or specification infringes, or that the Goods themselves (as a result of such design or specification) infringe or that the use or resale of the Goods infringes patent, copyright, design, trade mark or other industrial, intellectual property rights or other third party rights of whatever nature.
- 8.4 If the Goods are manufactured using materials supplied by the Buyer to the Seller, the Buyer will indemnify the Seller against all claims, damages, losses, costs and liabilities in respect of any claim made by a third party against the Seller that such Goods are defective where the defect results of the materials supplied by the Buyer.
- 8.5 Any claim by the Buyer which is based on (i) a non delivery of a consignment of Goods or loss of any part of a consignment must be notified to the Seller in writing by fax or post within 5 working days of the date of the relevant invoice or within 5 working days of the date of knowledge of such non-delivery, whichever is sooner, or (ii) a breach of the warranty in condition 8.1 must be notified to the Seller in writing by fax or post during the six month warranty period giving full details of the relevant claim and in any event within 28 calendar days of the time when the Buyer discovers the defect. If the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to make any such claim, the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition or quantity of the Goods is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but this shall be the Buyer's sole remedy and the Seller shall have no further liability to the Buyer. Prior authorisation of the Seller must be obtained before returning any Goods. The Seller shall also have the right to specify the method of packing and mode of delivery of such Goods.
- 8.7 Except in respect of death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation (in which case liability is not excluded or limited), the Seller shall not be liable to the Buyer for any loss of profits or business opportunities (whether direct or indirect) or for any indirect special or consequential loss of damage, costs, expenses or other claims for compensation whatsoever (whether caused by breach of contract, negligence of the Seller, its employees or agents or otherwise howsoever) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer and the entire liability of the Seller under or in connection with the Contract for any one claim or series of related claims shall not exceed the price paid for the affected Goods under the relevant Contract, except as expressly provided in these Conditions.

9. Insolvency of Buyer

- 9.1 This Clause applies if
- 9.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 9.1.2 the Buyer ceases, or threatens to cease, to carry on business; or
 - 9.1.3 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause 9 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Export

- 10.1 Where the Goods are supplied for export from the United Kingdom, the provision of this Clause 10 shall apply in addition to and notwithstanding any other provision of these Conditions.
- 10.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon. The Buyer shall also be responsible for ascertaining if there are any particular local laws applying to the supply of the Goods to that country of destination which may affect the Seller, to take legal advice on this and to inform the Seller of any steps which may be necessary.
- 10.3 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered CIF the agreed destination. The Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 10.4 The Seller shall have no liability for any claim in respect of any damage or deterioration of the Goods during transit.
- 10.5 The Buyer undertakes not to offer the Goods for resale in any country other than the country of destination or any other country notified to the Seller at the time the order is placed without prior discussion with the Seller.

11. General

- 11.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of the Incoterms and these Conditions, the latter shall prevail.
- 11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice
- 11.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision
- 11.4 The Contract shall be governed by the laws of England and Wales and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.
- 11.5 The Seller shall be entitled to vary these conditions by giving notice in Writing to the Buyer of the variation and the variation shall have effect 7 days from the date of this notice.
- 11.6 The Seller shall not be liable to the Buyer or be deemed in breach of the Contract by reason of any delay in performing or any failure to perform any of its obligations in relation to the Goods or under these Conditions if the delay or failure was due to any cause beyond its reasonable control (a "force majeure event"). If any force majeure event prevents the Seller from performing the Contract in accordance with its terms for more than 7 days this Contract may be terminated by either party giving notice in Writing to the other.

- 11.7 If any term of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, this shall not affect the validity and enforceability of the other terms of these Conditions and the remainder of the term in question (if applicable), which shall continue to apply.
- 11.8 No term of these Conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any third party, but this shall not affect any right or remedy of any third party which exists apart from that Act.
- 11.9 The Buyer shall not be entitled to assign this Contract or any part of it without the prior consent in Writing of the Seller. However, the Seller may assign this Contract or performance of it to any third party on giving notice in Writing to the Buyer.
- 11.10 The Buyer recognises that there is no transfer or licence of intellectual property to it from the Seller by virtue of this Contract. In particular, the Buyer does not receive a licence to use the Seller's (or its licensors') trade marks and agrees that it shall not register, attempt to register or in any way claim or purport to claim ownership over any such trade marks anywhere in the world. The Buyer shall notify the Seller immediately upon becoming aware of any unauthorised use of any of the Seller's trademarks, and shall give the Seller all reasonable assistance that the Seller may require in pursuing any claim in defence of such unauthorised use.
- 11.11 If in the course of fulfilling any Contract, the Buyer acts as a Data Processor (as that term is understood under the Data Protection Act 1998 or any amending or replacement legislation from time to time) for the Seller, the Buyer agrees that, in relation to any personal data received from the Seller, it shall only process such personal data as reasonably necessary for the purposes of fulfilling the Contract and it shall take appropriate technological and organisational measures to protect that data from accidental loss or destruction or from unauthorised access or disclosure.