

TERMS OF SALE

1. INTERPRETATION

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

Buyer means the person or company whose order for the Goods is accepted by the Seller in Writing;

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. The Conditions exclusively apply to business to business transactions;

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

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

Incoterms means the Incoterms 2020, being the current international rules for the interpretation of trade terms of the International Chamber of Commerce;

Policies means the Seller's policies and statements relating to the supply of Goods in force from time to time, the current versions of which can be found on its website (currently at <https://ecelectronics.com/about-us/quality>);

Seller means EC Electronics BV whose office is registered at Keizersgracht 127, Amsterdam 1015CJ, Netherlands, Business registration No. 75833336;

Working Day means a day other than a Saturday or a Sunday or a public holiday in the Netherlands; and

Writing or Written includes email and comparable means of communication.

1.2 In these Conditions (except where the context otherwise requires):

- (a) a 'person' includes a natural person (not being a consumer), sole proprietorship (in Dutch: eenmanszaak), corporate or unincorporated body (whether or not having separate legal personality);
- (b) reference to a 'party' means the parties to the Contract and includes their respective 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, and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and
- (d) any words following the terms "including", "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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 apply to the Contract to the exclusion of any other terms that the Buyer may seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

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 No order submitted by the Buyer shall be deemed accepted by the Seller unless and until confirmed in Writing by the Seller, at which point the Contract shall come into existence.

- 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 incurred by the Seller in connection with the manufacturing of the Goods up until the effective date of cancellation, including the materials and time costs incurred relating to design work, tool, dies, special equipment purchased or manufactured specifically for execution of the Contract in question.
- 3.3 Each Delivery of Goods to the Buyer shall be considered a separate Contract for the purposes of this clause 3.
- 3.4 The Buyer shall provide the Seller with all relevant, full and accurate information in the any order relating to:
- (a) the manufacture of the Goods, including details of any applicable specification and designs; and
 - (b) the quality of any materials provided by the Buyer and the interoperability of any manufactured Goods with any other products of the Buyer.
- 3.5 Where agreed, the Buyer shall provide the Seller with any necessary materials in accordance with the instructions in the order, or as otherwise agreed in advance to enable the Seller to perform the Contract. Where the Buyer does not provide the Seller with any specific materials, the Seller shall be free to select its own components and materials to manufacture the Goods.
- 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:
- (a) any factor beyond the control of the Seller, such as fluctuation in relevant exchange rates, increases in taxes and duties or the increased cost of materials;
 - (b) any request by the Buyer to change the delivery dates, quantities or specification of the Goods ordered; or
 - (c) any delay caused by any instructions of the Buyer or failure by the Buyer to give the Seller any necessary materials, or accurate information or instructions.
- 4.3 The price is given on an ex works basis (Incoterms 2020) and is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 5. TERMS OF PAYMENT**
- 5.1 The Seller shall be entitled to invoice the Buyer for the cost 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 as invoiced by the Seller within 30 days from the end of the month in which the Goods are Delivered, unless otherwise stated in Writing and agreed by both parties.
- 5.4 Any pro-forma invoices issued pursuant to clause 5.2(a) or clause 5.9 shall be payable within 3 Working Days of receipt. The time of payment of the price shall be of the essence of the Contract.
- 5.5 Receipts for payment will be issued only upon request.
- 5.6 If the Buyer fails to make any payment on or before 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 to: (i) terminate (in Dutch: ontbinden) the Contract immediately, without prior notice of default, 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 5.7 below.
- 5.7 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, (such interest to be compounded on a monthly basis) which shall accrue daily from the due date for payment until the time payment is actually received in cleared funds by the Seller at a rate equal to 4% per annum above the Dutch statutory commercial default interest rate.
- 5.8 Payments shall be made by the Buyer in full without any deduction whatsoever, whether by set-off, counter-claim or otherwise.

5.9 Where the Buyer has breached the payment terms in this clause 5 more than 3 times within any period of 12 consecutive months, 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 completed in accordance with the delivery arrangements specified in the Contract (**Delivery**). Unless delivery by the Seller is agreed in Writing in the Contract (which is subject to additional charges), the Buyer shall collect the Goods from the Seller's premises 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, the Seller shall deliver the Goods to that place at the Buyer's cost (unless agreed otherwise with the Seller in Writing in advance). The Buyer shall collect the Goods within 7 days of being notified by the Seller that they are ready for collection pursuant to this clause 6.1.

6.2 While the Seller shall use reasonable endeavours 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. In respect of Delivery:

- (a) Delivery is subject to the relevant lead-times on components and materials that may need to be ordered by the Seller to enable it to manufacture the Goods;
- (b) time for Delivery shall not be of the essence of the Contract;
- (c) in the event that the delay exceeds 180 calendar days after the agreed delivery date, the parties shall meet to discuss a revised date for Delivery. In the absence of any agreement and subject to the Buyer paying the Seller's costs referred to in clause 3.2 up until the effective date of cancellation, the Buyer shall be entitled to cancel the Contract in so far as it relates to the delayed delivery consignment in question; and
- (d) the foregoing provisions shall be the Buyer's exclusive remedy in respect of such delay in Delivery.

6.3 The Seller shall not be liable for any delay in Delivery that is caused by the Buyer's failure to provide the Seller with adequate delivery instructions or any other act or omission of the Buyer.

6.4 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.

6.5 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 the Buyer must give Written notice to the Seller and allow the Seller a reasonable opportunity to examine the Goods. The Buyer shall not be entitled to reject the whole delivery consignment, but only that percentage of the Goods which is defective.

6.6 The Seller reserves the right to Deliver the Goods ordered under each Contract in instalments. If Goods are Delivered in instalments, the Seller shall be entitled to invoice for each instalment as and when that instalment is Delivered in accordance with clause 5.1, and payment shall be due in respect of each instalment Delivered notwithstanding non-delivery of the other instalments.

6.7 If the Buyer fails to take Delivery of the Goods in accordance with clause 6.1 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 (in its sole discretion): (i) store the Goods until Delivery is made to the Buyer and charge the Buyer for all related costs and expenses (including insurance); and/or (ii) sell or otherwise dispose of all or part of the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for any excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.8 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.

7.2 Notwithstanding Delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received payment in full (cash or cleared funds) of the price of the Goods and for 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 title 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 against all risks for their full replacement value and identified as the Seller's property.

7.4 Until such time as the property in the Goods passes to the Buyer, 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 promptly, 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 on Delivery and for a period of twelve months following Delivery the Goods will be free from defects in material and workmanship and will correspond in all material respects with their order specification. 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 the Buyer or any end user or failure to follow instructions (oral or Written) as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) any further use of the Goods after discovery of any defect;
 - (d) any damage or faults due to assembly of Goods with other goods;
 - (e) the design or choice of components for the Goods; or
 - (f) any defect arising as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 8.2 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or law or otherwise in any way, whether as to quality, fitness for purpose or otherwise 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. The Buyer shall indemnify the Seller against all claims, damages, losses, costs, expenses and liabilities (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller arising out of or in connection with any claim made by a third party against the Seller that the Seller's use of the design or specification (actually or allegedly) 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, expenses and liabilities (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller arising out of or in connection with 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 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 during the twelve 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 returned Goods.
- 8.7 Except in respect of death or personal injury caused by the Seller's negligence (in which case liability is not excluded or limited), (i) the Seller shall not be liable to the Buyer for any loss of profits, loss of sales 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 Contract and the supply of the Goods or their use or resale by the Buyer and (ii) 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:

- (a) 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
- (b) the Buyer ceases, or threatens to cease, to carry on business; or
- (c) 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 terminate (in Dutch: *ontbinden*) the Contract immediately, without prior notice of default, 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 AND SUPPLY CHAIN

10.1 Where the Goods are supplied for export from the Netherlands, 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.

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.

10.6 The Seller sources materials and components and manufactures products in accordance with the Policies, including its Conflict Minerals Policy. The Seller shall provide reasonable assistance to respond to reasonable enquires relating to its Policies and procedures. Any extensive enquiries from the Buyer in this regard, may be subject to the Buyer paying to the Seller the Seller's reasonable costs incurred in investigating and responding to such enquiries (at the Seller's standard rates from time to time).

10.7 Subject to the Seller complying with the requirements described in clause 10.6 and unless agreed otherwise in the Contract, the Buyer acknowledges and agrees that the Seller is free to source materials and components from its own selected manufacturers.

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 Seller shall be entitled to vary these Conditions by giving notice in Writing to the Buyer of the variation and the variation shall take effect 7 days from the date of such notice unless the Buyer objects in Writing in respect of any binding Contract.

11.5 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, including an epidemic, pandemic or following government guidance in response to the same (a **Force Majeure Event**). If any Force Majeure Event prevents the Seller from performing the Contract in accordance with its terms for more than 60 days the Contract may be terminated with immediate effect by either party giving notice in Writing to the other. Termination by the Buyer pursuant to this clause 11.5 is conditional upon the Buyer paying for the Goods Delivered as well as the full costs incurred by the Seller in connection with the manufacturing of the Goods up until the effective date of cancellation, including the materials and

time costs incurred relating to design work, tool, dies, special equipment purchased or manufactured specifically for execution of the Contract in question.

- 11.6 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.
- 11.7 No term of these Conditions shall be deemed to be a third-party clause within the meaning of Section 6:253 of the Dutch Civil Code.
- 11.8 The Buyer shall not be entitled to assign the Contract or any part of it without the prior consent in Writing of the Seller. However, the Seller may assign the Contract or performance of it to any third party on giving notice in Writing to the Buyer. The Buyer hereby grants in advance its approval to such assignment within the meaning of Section 6:159 of the Dutch Civil Code.
- 11.9 The Buyer recognises that there is no transfer or licence of intellectual property to it from the Seller by virtue of the Contract or these Conditions. In particular, no licence is hereby granted directly or indirectly by the Seller (or its licensors') to the Buyer to use any patent, invention, discovery, copyright, trade mark or other intellectual property right held, made, obtained or licensed by the Seller and the Buyer agrees that it shall not register, attempt to register or in any way claim or purport to claim ownership over any such rights anywhere in the world. The Buyer shall notify the Seller immediately upon becoming aware of any unauthorised use of any of the Seller's patents, inventions, discoveries, copyrights, trademarks or other intellectual property rights, and shall give the Seller all reasonable assistance that the Seller may require in pursuing any claim in defence of such unauthorised use.
- 11.10 Each party acknowledges and agrees that:
- (a) in entering into the Contract it does not rely on and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made) or understanding of any person (whether party to the Contract or not) which is not expressly set out in the Contract; and
 - (b) the only remedy available to it for breach of any statement, representation, warranty or other term which is expressly set out in the Contract shall be for breach of contract under the terms of the Contract.
- 11.11 Each party shall, at its own expense, ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications including, without limitation: the General Data Protection Regulation ((EU) 2016/679(in Dutch: "AVG")) and the General Data Protection Regulation (Implementation) Act (in Dutch: "UAVG").

12. GOVERNING LAW AND JURISDICTION

The formation, existence, construction, performance, validity and all aspects of these Conditions and each Contract, as well as any and all (contractual or non-contractual) rights, obligations, claims or disputes arising in connection with these Conditions and each Contract, are governed by and will be interpreted exclusively in accordance with Dutch law. All disputes related to these Conditions and each Contract and any and all (contractual or non-contractual) rights, obligations, claims or disputes arising in connection therewith will be submitted exclusively to the competent court of Amsterdam.