

TERMS AND CONDITIONS OF SALE

1. Definitions

- (1) The 'Seller' shall mean Merlyn Electronics Limited.
- (2) The 'Buyer' shall mean the organisation accepting the Seller's quotation (Whether written or oral) embodying these conditions.
- (3) The 'Contract' shall mean the contract between the Buyer and the Seller for the provision of the Goods.
- (4) The 'Goods' shall mean electronic- or other equipment or services covered by the purchase order.

2. Conditions Applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3. Descriptions, Drawings, Specifications etc

- 3.1 All technical descriptions, specifications, representations and other particulars relating to the Goods furnished by the Seller to the Buyer are only binding on the Seller if specifically confirmed in writing by a duly authorised representative of the Seller.
- 3.2 The Buyer is responsible to the Seller for ensuring the accuracy of all specification and drawings provided by the Buyer. The Buyer shall provide the Seller with all necessary information and material that may reasonably be required from time to time to permit the contract to proceed.

4. Price and Payment

- 4.1 The Price of the Goods shall be the Seller's quoted price Ex Works, Salford in accordance with 'EXW' INCOTERMS 2000 of The International Chamber of Commerce and this price shall be binding on the Seller provided that the Buyer shall accept the Seller's quotation within 30 days. The price is exclusive of VAT which, where applicable, shall be due at the rate ruling on the date of the VAT invoice.
- 4.2 The Seller may, by giving notice to the Buyer at any time up to 90 days before delivery, increase the Price of the Goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the contract of sale which are beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). Provided that the Buyer may cancel this contract within 30 days of any such notice from the Seller.
- 4.3 The payment of the price and the VAT where applicable shall be due within 30 days of the date of the invoice (Time for payment shall be of the essence)
- 4.4 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 3% above HSBC base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.

5. Delivery

- 5.1 Delivery time will be as quoted on the order acknowledgement. Although the Seller will endeavour to supply the Goods within the specified delivery time the Seller shall not be liable for any delay in delivery howsoever caused.

6. Property and Risk

- 6.1 In spite of delivery having been made, property in the Goods shall not pass from the Seller to the Buyer until:
 - 6.1.1 The Buyer shall have paid the Price and, where chargeable, the VAT, in full;
 - 6.1.2 No other sums whatever shall be due from the buyer to the seller.
- 6.2 Until property in the Goods passes to the Buyer in accordance with clause 6.1 above the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller
- 6.3 From time of delivery, the risks of loss and/or damage to the Goods shall be with the Buyer.

7. Conditions and Warranties

- 7.1 The Contract shall not constitute a sale by description or sample.
- 7.2 Any conditions or warranties (whether express or implied by statute, common law or arising from conduct or a previous course of dealing, or trade custom or usage) as to the quality of the Goods or their being satisfactory for any particular purpose (Even if that purpose is made known expressly or by implication to the Seller) are hereby expressly negated.

8. Consequential Loss

- 8.1 The Seller shall not be liable for any costs, claims, damages, expenses of loss of income or profit arising out of any tortious act or omission or any breach of contract or statutory duty.

9. Default or Insolvency of Customer

- 9.1 If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Buyer or if the Buyer is unable to pay its debts as they fall due or, being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if any petition for the appointment of an administrator is presented against the Buyer or if the Buyer shall suffer any analogous proceedings under foreign law, all sums outstanding in respect of the Goods shall become payable immediately. The Seller may, in its absolute discretion and without prejudice to any other rights which it may have;
 - (a) suspend all future deliveries of Goods to the Buyer and/or
 - (b) terminate the contract without liability upon its part and/or
 - (c) exercise any of its rights pursuant to clause 6 above.

10. Limitation of Liability

- 10.1 The liability of the Seller to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and under no circumstances shall exceed the price of the Goods.
- 10.2 Any claim by the Buyer against the Seller in respect of faulty goods shall be made within 60 days of the receipt of the goods by the Buyer.

11. Software

- 11.1 The Seller agrees to grant to the Buyer and the Buyer agrees to accept, a non-exclusive and non-transferable license to use the Software made available to the Buyer by the Seller on the following terms and conditions.
- 11.2 The license shall become effective on the date of delivery of the Software to the Buyer and shall continue in full force and effect until the license for the Software is terminated as provided below;
- 11.3 The Software licensed hereunder is and incorporates proprietary information and trade secrets. The Software, or any part thereof, may only be used on the system in which it is first installed. The Software may not be copied in whole or in part except for use on such system and for the creation of security and backup copies of the Software in magnetic form as part of an organised archiving procedure.
- 11.4 The Seller shall have the right to terminate the license giving 60 days notice. The Buyer agrees upon notice of such termination immediately to return the Software provided under such terminated license and all portions and copies thereof. Such termination shall not alter the right of the Seller to claim against the Buyer in respect of any breach of the agreement by the buyer that may occur before or after the termination.

12. Representations

- 12.1 No statement, description, warranty condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the agents or employees of the Seller shall be construed to enlarge, vary or override in any way any of these conditions.

13. Assignment and Sub-contracting

- 13.1 The Seller reserves the right to assign the Contract with the Buyer or to sub-contract the whole or any part thereof to any person, firm or Company.
- 13.2 The Buyer shall not have the right to assign the Contract with the Seller or any part of it to any person, firm or Company without the consent in writing of the Seller.

14. Intellectual property

- 14.1 No right or license is granted under this contract of sale to the Buyer under any patent, trademark, copyright, registered design or other intellectual property in them except the right to use or resell the Goods.

15. Force Majeure

- 15.1 In the event of delivery of the Goods being frustrated or delayed by strikes, riots, lockouts, civil commotions, industrial action, wars and warlike activities or seizures by foreign states, force majeure happenings or other causes not within the control of the Seller, then it is agreed that the Seller shall not be held responsible for any loss of trade or profit or any claim for damages due to delay by the Buyer or by any end user or other third party. The Seller shall notify the Buyer, of the event giving rise to the frustrated or delayed delivery as soon as possible after first being made aware of the facts.

16. Secrecy and Confidentiality

- 16.1 The Buyer shall not, at any time, during or after the term of this Contract, divulge or allow to be divulged to any person, any confidential information relating to the products or business affairs of the Principal or the way in which the business is conducted, other than to authorised persons who are employed by the Buyer.

17. Headings

- 17.1 Headings contained in these Terms and Conditions are for reference purposes only and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

18. Jurisdiction

- 18.1 The Contract shall be subject to the jurisdiction of the English courts and shall be construed in accordance with English Law.