

WELWYN COMPONENTS LIMITED

Terms and Conditions of sale

1. INTERPRETATION

In these terms and conditions "the company" means Welwyn Components Limited, "the Buyer" means the party with whom the Company is contracting and "goods", where the context so permits and requires, means the goods and/or services which the company contracts to supply and/or to provide and "Conditions" means the following terms and conditions of sale.

2. THESE CONDITIONS APPLY

- 2.1 Unless the Company shall otherwise expressly agree in writing every offer, tender, quotation, acceptance and contract for the sale or supply of goods, including services ancillary thereto, by the Company is made subject to these conditions and all other terms and conditions proposed by the Buyer are expressly excluded. No modification of these terms and conditions shall be effective unless reduced to writing and signed by a person duly authorised by the Company. No binding contract shall be created by the acceptance of a quotation or offer made by the Company until notice of acceptance of the order in writing signed by a person duly authorised shall have been given to the Company by the Buyer.
- 2.2 In the absence of any agreement in writing expressly excluded or varying the Conditions the Conditions apply to contracts for the sale of goods arising on acceptance by the Company, by whatever means, of any order received via the interchange of data by teletransmission (Electronic Data Exchange).

3. BUYER'S CREDIT STATUS

Unless and until the credit status of the Buyer has been approved by the Company the acceptance by the Company of any order is conditional on its approval of such credit status.

4. PRICES

- 4.1 All tender prices are based on costs payable by the Company ruling on the date of tender. Such costs may increase between tender and delivery date. The Company shall have the right, by giving notice to the Buyer at any time before delivery, to increase the price of any goods [and/or to postpone delivery] to reflect any increase in cost to the Company. Exercise by the Company of this right shall not entitle the Buyer to cancel the contract.
- 4.2 Where any additional or changed information is submitted to the Company by the Buyer after the date of the Contract the Company reserves the right to increase prices to cover any additional costs (including additional overheads) incurred by the Company as a result of such alteration and/or to extend the delivery period.
- 4.3 All prices are ex works unless otherwise stated. Carriage by whatever method may, at the Company's option, be charged to the Buyer in addition.
- 4.4 The Company shall be entitled to charge at such rate as shall be fair and reasonable for all preliminary or development work which the Company carries out at the request of the Buyer.
- 4.5 A quotation is available for acceptance for thirty days from the date thereof and lapses, if not previously accepted, at the end of that time.
- 4.6 The Company shall be entitled to make a surcharge for fulfilling any order with a value less than such minimum as the Company shall from time to time fix as its current minimum order price.
- 4.7 Where the Buyer requests items to be supplied with release certificates the Company reserves the right to make an extra and reasonable charge for providing such certificates.

5. QUANTITY

- 5.1 The price quoted is for the stated quantities only and not for materially lesser or greater quantities.
- 5.2 The Company shall have the right to deliver a quantity of goods up to five per cent more or less than the quantity ordered, in which case any price agreed for such delivery shall be adjusted pro rata to the quantity of goods actually delivered.

6. SCHEDULE ORDERS

- 6.1 A Schedule Order, when accepted by the Company, shall constitute authority for the manufacture of all goods in the Schedule Order. The Buyer shall be obliged to take delivery of and pay for all goods in the Schedule Order.
- 6.2 The Buyer shall take delivery of goods in a Schedule Order within twelve months from the date of acceptance of the Schedule Order by the Company.
- 6.3 The Buyer shall be entitled by notice in writing to bring forward or to postpone the date of delivery of goods in a Schedule Order but, unless the Company expressly otherwise agrees in writing, not in the case of custom goods by less than eight weeks' notice and in any other case by less than four weeks' notice.
- 6.4 The Buyer shall at all times be liable to pay to the Company all costs and losses incurred by the Company in respect of goods in a Schedule Order including (but without limitation) those in respect of finished goods, work in progress, materials acquired by the Company for the purpose of fulfilling the Schedule Order and manufacturing tools.

7. INVOICING AND PAYMENT

- 7.1 The Company will be entitled to invoice the Buyer on the date on which the goods are despatched. If the Company agrees at the request of the Buyer to defer delivery of any goods or suspends delivery of any goods in accordance with condition 7.8 or extends the delivery in accordance with condition 4.2 or 8.2, the Company will be entitled to invoice the Buyer for such goods on the date on which they would otherwise have been due for despatch.
- 7.2 In the case of contracts for the supply by the Company of custom goods, charges for design artwork and tooling charges may be invoiced by the Company at the time of shipment of the first prototype. Minor component or layout changes not affecting costs may at the Company's discretion be accepted without extra charge, provided notification is received in writing before design starts or within three working days of receipt by the Company of the Buyer's order, whichever is the earlier. The Company reserves the right to invoice at the time of shipment of the first prototype any additional design tooling or prototype manufacturing charges arising from changes requested by the Buyer after the contract has been entered into.
- 7.3 Unless the Company notifies the Buyer otherwise, payment is due, whether or not title to the goods has passed to the Buyer, by the end of the month following the month of invoice.
- 7.4 Unless otherwise expressly agreed in writing by the Company, payment in full without discount shall be made in Pounds Sterling and the Buyer shall not be entitled for any reason to withhold payment of the amount shown on the invoice as due.
- 7.5 Payment is made and received only at the time when cash is handed to a duly authorised representative of the Company who issues an official written receipt therefor or when any cheque or draft sent or delivered to the Company is cleared and/or the Company's bank account credited with the relevant amount, and not at any earlier time.
- 7.6 If goods are for delivery outside the United Kingdom, the Company, unless otherwise agreed with the Buyer, shall be entitled to payment by irrevocable letter of credit confirmed by a bank approved in writing by the Company against the usual documents. The Buyer shall reimburse to the Company any costs and expenses which are incurred by the Company in receiving payment by irrevocable letter of credit.
- 7.7 The Company reserves the right to charge interest at the rate of three per cent per annum above Midland Bank Plc Base Rate for the time being on all overdue accounts from the due date until the date of actual payment.
- 7.8 Failure to make payment on due date shall constitute a breach of contract and without prejudice to any other rights which it may have against the Buyer the Company may suspend all further deliveries of goods under all contracts then in existence between the Company and the Buyer until payment of all sums payable by the Buyer under that contract and all other sums then due and payable to the Company by the Buyer has been made in full and/or may terminate the contract.
- 7.9 If the Company exercises its right to suspend delivery of the goods in accordance with Condition 7.8 the dates for delivery of all goods under all contracts in existence at the time when the Company exercises such right of suspension shall, unless the Company otherwise decides, be postponed by a period equal in length to that of the delay in payment by the Buyer entitling the Company to suspend deliveries (or, if the suspension shall be in respect of payments due on more than one date, for the period during which the earliest such payment shall be delayed).
- 7.10 Time for payment is of the essence.

8. MANUFACTURING SPECIFICATIONS

- 8.1 The Company reserves the right to supply, without additional cost to the Buyer, goods with a technical specification higher than that of the goods which it has contracted to supply.
- 8.2 Where goods have been supplied to the Buyer's specification, the Company accepts no liability for any defect in goods which meet that specification and the Buyer shall indemnify the Company against all actions, claims, costs and proceedings, in respect of such goods including claims that the specification or goods infringe(s) any patent, registered design, copyright or other industrial or intellectual property right of any third party. The Company gives no warranty as to the fitness for any particular purpose of goods so supplied to the Buyer's own specification and accepts no liability for clerical or stenographical errors on any drawing or specification provided by the Buyer.

9. DELIVERY

- 9.1 Although the Company will make every effort to deliver on the agreed date, time for delivery is not of the essence of the contract. Any quoted delivery date or period is a business estimate only and is conditional on the Buyer, at the time of placing the order, providing the Company with such information concerning the Buyer's requirements as enables the Company to fulfil the order. The Company shall not be liable for any loss or damage whatsoever caused by delayed delivery of goods. Delay in delivery will not entitle the Buyer to rescind the contract.
- 9.2 Goods will be deemed to be delivered within five days after the date of invoice, unless prior to the expiry of such five days, the Buyer notifies the Company and any carrier in writing of non-delivery.
- 9.3 The Buyer must notify the Company by telephone of any non delivery or short delivery or loss or damage to goods in transit immediately upon delivery of the goods or of the invoice therefor (whichever is the earlier) and must confirm the same in writing within seventy two hours thereafter; the Buyer shall at the same time notify any carrier in writing of any such loss or damage and, if relevant, shall enter a note of the same on the carrier's receipt. If the Buyer fails to give notice as provided above and the Company is precluded from making recovery whether from any insurer or any other third party in respect of the loss or damage complained of, then the Buyer shall be liable to pay for the goods as though no such loss or damage had occurred.
- 9.4 If any carrier of any consignment of goods receives an unqualified receipt therefor by or on behalf of the Buyer, the Company shall have no liability to the Buyer for loss of or damage in transit to such goods or for misdelivery or non delivery thereof.
- 9.5 The Company may at its discretion deliver the goods by instalments in any sequence.
- 9.6 If the goods are delivered by instalments each instalment shall be deemed to be subject of a separate contract and no default or failure by the Company in respect of any one or more instalments shall avoid the contract in respect of goods previously delivered or undelivered goods.

10. FAILURE TO TAKE DELIVERY

- 10.1 If the goods are ready for delivery and the Buyer fails to take delivery at the time required by the contract the Company shall be entitled:-
- 10.1.1 to invoice such goods forthwith; and
 - 10.1.2 to charge at rates giving an economic return for the handling and storage of such goods, and for their insurance, from the date of invoice to the date when the Buyer takes delivery or the Company disposes of the same.
- 10.2 If the Buyer fails to take delivery within thirty days of the date of invoice it shall be deemed to have repudiated the contract and without prejudice to any other right which it may have against the Buyer, the Company shall be entitled to resell the goods.

11. WARRANTY AGAINST DEFECTS

- 11.1 The Company warrants that at the time when they leave the premises of the Company all goods correspond with their specification and are free from defect in material and workmanship provided that the Company's liability under this warranty shall be limited to either, at the Company's discretion, replacement of goods free of cost to the Buyer or payment by the Company to the Buyer of an amount not exceeding the original purchase price of the goods in respect of which notice of the defect is given to the Company within twelve months of the date of invoice and which are returned to the Company carriage paid within seven days of the Buyer first becoming aware of the defects.
- 11.2 The warranty contained in condition 11.1 above is given in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied and whether arising by common law statute or otherwise other than relating to title to the goods.
- 11.3 The warranty contained in condition 11.1 above does not apply to and the Company accepts no responsibility for defects in goods which have been tested in accordance with the Buyer's express contractual requirements and have satisfied such tests.
- 11.4 Unless otherwise expressly agreed by the Company the warranty contained in condition 11.1 does not apply to and the Company accepts no responsibility for:-
- 11.4.1 damage occurring in transit
 - 11.4.2 goods which have suffered or been subject to use otherwise than in accordance with the instructions or advice of the Company or undue wear and tear, accident, mis-use, improper application, neglect or overloading; or
 - 11.4.3 consumable items.
- 11.5 The Buyer shall not rely upon any representation concerning any goods supplied unless the same shall have been made by a person authorised by the Company in writing.

12. RETENTION OF TITLE

- 12.1 The legal and equitable title to the goods supplied under the contract (in this condition referred to as "the contract goods" which expression includes any of them) will not pass to the Buyer until the price for the contract goods has been paid in full and until such payment the Buyer will hold them in fiduciary capacity as bailee for the Company.
- 12.2 Notwithstanding the provisions of condition 12.1 above, the Buyer shall be entitled to dispose of the goods for the account of the Company (but so that any warranties, conditions or representations given or made by the Buyer to his customer shall not bind the Company which shall be indemnified by the Buyer in respect thereof) and to pass good title to the goods to any customer which is a bona fide purchaser for value without notice of the Company's rights.
- 12.3 Where the contract goods are resold by the Buyer and at the time of such resale the property in such goods has not passed to the Buyer then the proceeds of such resale will be held by the Buyer in a fiduciary capacity on trust for the Company and the Buyer will account to the Company for the same to the extent necessary to pay the price for the contract goods and the Company shall have the additional right to recover in the name of the Buyer (for which purpose the Company is hereby appointed the Buyer's attorney) any price payable to the Buyer by his customer but if it shall exercise such right the Company shall account to the Buyer for the balance of the amounts recovered after recouping all debts due to the Company from the Buyer and the costs of such recovery.
- 12.4 The Buyer shall so long as the Company is entitled to the property in the contract goods store the contract goods so that they are identifiable as the property of the Company.
- 12.5 Without prejudice to any of the Company's other rights (whether to damages or under contract or otherwise howsoever) the Company may at any other time after the price for the contract goods has become due and remains unpaid rescind the contract and/or recover any contract goods which are still the property of the Company. By entering into this contract the Buyer hereby authorises the Company's servants and agents to enter into any premises of the Buyer for that purpose.

13. RISK

- 13.1 Risk in the goods shall pass to the Buyer on delivery thereof.
- 13.2 The buyer shall keep the goods fully insured against all risks normally insured against throughout the period between the risk therein passing to the Buyer and the property therein ceasing to remain with the Company.
- 13.3 All items and materials which are the property of the Buyer or which are supplied by the Buyer to the Customer shall while in the possession of the Company or in transit to or from the Buyer be at the Buyer's risk, unless otherwise expressly agreed in writing by the Company.

14. COMPANY'S REMEDIES

- 14.1 If the buyer shall make default in any material respect in its obligations to the Company, or if any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make or offer any arrangement or composition with its creditors or if there shall be any other grounds upon which the Buyer shall become insolvent for the purposes of the Insolvency Act 1986 or any resolution or petition to wind up the Buyer or for the appointment of an administrator of the Buyer shall be passed or presented the Company (without prejudice to any other right to which it may be entitled):-
- 14.1.1 may suspend or terminate the contract or any unfulfilled part thereof without prejudice to its existing rights thereunder;
- 14.1.2 may stop any goods in transit;
- 14.1.3 may recover from the Buyer's premises any goods which are the property of the Company; and
- 14.1.4 shall be entitled to claim against the Buyer for any loss or damage sustained as a result of such suspension or termination.
- 14.2 If items or materials supplied by the Buyer for working by the Company are defective the Buyer shall be liable to the Company for the cost of all work performed by the Company thereon including work to remedy such defects.

15. LIMITATION OF LIABILITY

- 15.1 Except as otherwise expressly provided in these conditions, or in respect of personal injury or death caused by the negligence of the Company, the Company shall be under no liability in respect of the quality, condition or description of the goods or for loss or damage including consequential loss or damage howsoever caused to the Buyer or to any other person, and whether for breach of any express or implied provision of the contract or for negligence, breach of statutory or other duty on the part of the Company or otherwise arising out of or in connection with the performance or non-performance or purported performance of the contract.
- 15.2 If items or materials are supplied by the Buyer to the Customer for work to be performed on them or for incorporating with goods to be supplied by the Company to the Buyer the liability of the Company for defective work shall be limited to rectifying the work or satisfactorily repairing the work or to carrying out like work on replacement items or materials supplied by the Buyer free of charge and in no event shall any such liability of the Company continue after the items concerned have been inspected or delivered or left the United Kingdom whichever shall be the earliest.

16. INDEMNITY BY BUYER

The Buyer shall indemnify the Company against all liabilities costs and expenses which the Company may incur by reason of any claim by any subsequent purchaser or user of the goods or of any product incorporating the goods or manufactured by using the goods or by reason of any claim by any relative or dependant of such purchaser or user arising from any defect or alleged defect in the goods or in such product except and to the extent that such liabilities, costs and expenses arise from a breach by the Company of its obligations under these conditions.

17. RETURNED GOODS

- 17.1 No contract for goods ordered may be cancelled by the Buyer and save as otherwise provided in these conditions no goods may be returned without the prior written consent of the Company and authorisation by its issue of a returned material authorisation number
- 17.2 If the Company agrees to accept return of any goods the Buyer shall be obliged to effect the return of such goods in good condition and at its own risk and cost.
- 17.3 Notwithstanding any agreement to accept return of the goods the Company will not be obliged to accept delivery of any returned goods unless they are returned in primary packages which are undamaged.

18. HEALTH AND SAFETY

- 18.1 The Company has available up-to-date information and/or product literature concerning the conditions necessary to ensure that the goods supplied will be safe and without risk to health when properly used. This information is and will remain available from the Company.
- 18.2 The Buyer shall be solely responsible for and shall keep the Company indemnified against any loss, liability or expenses arising directly or indirectly from use of the goods other than in accordance with their specification or the Company's operating instructions or the information and product literature referred to in condition 18.1 or (where no such specifications or instructions exist) in a manner which could not reasonably be considered to be safe and without risk.

19. EXPORT ONLY

- 19.1 If the Company concludes the contract of carriage and/or arranges for the insurance of the goods for transit the Company shall be deemed to be acting solely as the Buyer's agent and sub-sections (2) and (3) of Section 32 of the Sale of Goods Act 1979 shall not be applicable.
- 19.2 In the case of any goods to be exported from the United Kingdom, the Buyer is responsible for obtaining import authorisations, and the Company shall have no obligation to despatch the goods unless and until the Buyer has provided all documentation and information necessary for export and import of the goods to be effected.

20. SPECIFICATIONS ETC

Except as otherwise expressly agreed in writing, all specifications, patterns, drawings, unregistered designs, dies, moulds, tools and the like produced by the Company shall remain the property of the Company. The Buyer may not utilise, reproduce or communicate knowledge of such items and the Buyer shall return the same to the Company at the Company's request.

21. CUSTOMER RETURNABLE PACKAGES

If the contract is for the supply of goods to be delivered in the United Kingdom and the Customer and the Buyer have not otherwise agreed, customer returnable packages used for delivery of the goods shall remain the property of the Company and must be returned by the Buyer to the Company within one month of such delivery in the same condition as received by the Buyer. Customer returnable packages not so returned will be charged at replacement cost and the Buyer shall be liable to the Company accordingly.

22. TECHNICAL DATA

Whilst every effort has been made to ensure the accuracy of any technical data provided to the Buyer, the Company accepts no liability arising from errors or omissions therein. In particular, performance figures quoted by the Company for its products are for illustrative purposes are based upon experience, and are not warranted.

23. PRINCIPALS

The contract is between the Company and the Buyer and shall not be assignable without the express written consent of the Company. The Company reserves the right to sub-contract the fulfilment of any order or contract or any part thereof.

24. FORCE MAJEURE

The Company shall not be liable for failure to comply with any of its obligations under the contract in the event that compliance is delayed or prevented by any cause whatsoever beyond its reasonable control, including, but not limited to, war, riot, strike, lock-out, act of God, storm, fire, earthquake, explosion, flood, confiscation, action of any government agency or shortage.

25. RIGHTS OF COMPANY

No forbearance or indulgence by the Company shown or granted to the Buyer in respect of the terms and conditions of sale of the goods shall affect or prejudice the rights of the Company against the Buyer.

26. SET OFF

The Buyer shall not be entitled to the benefit of any set-off to which the Buyer might be otherwise entitled in law or in equity. All sums payable under the contract will be payable without any deduction and the Company shall be entitled in the event of non-payment to obtain and enforce judgement thereon without any stay of execution pending the determination of any cross or counter claim by the Buyer.

27. CONFIDENTIAL

The existence of the contract its content and subject matter are confidential and shall not be disclosed by the Buyer without the prior written consent of the Company.

28. EFFECT OF INVALID PROVISIONS

If any provision of the contract is held to be invalid, illegal or unenforceable in any way, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

29. NOTICE

Any notice under the contract shall be in writing sent by first class pre-paid letter post or facsimile transmission confirmed by first class pre-paid letter post. Any notice to the Company shall be addressed to the Company at its registered office and to the Buyer at the address notified by the Buyer to the Company for that purpose or if none is so notified to the address of the Buyer last known to the Company. A notice given as aforesaid by post shall be deemed served forty eight hours after posting and by facsimile at the time of transmission thereof.

30. HEADINGS

Headings are inserted for convenience only and shall not affect the meaning or construction of these conditions.

31. THE CONTRACTS ACT

The provisions of The Contracts (Rights of Third Parties) Act 1999 are hereby excluded and shall not apply.

32. PROPER LAW

These conditions and the contract shall be subject to and construed in accordance with English Law and the parties hereby agree to accept the exclusive jurisdiction of the English Courts in all matters connected therewith or relating thereto.