

## **STANDARD TERMS AND CONDITIONS OF PURCHASE**

### **1. DEFINITIONS & GENERAL**

- (a) The "Purchaser" means Kent Modular Electronics Limited.
- (b) The "Seller" means the person, firm or body corporate, which sells or has agreed to sell the goods or services.
- (c) The "contract" means the agreement between the Seller and the Purchaser, which incorporates these conditions.
- (c) The "goods" means any item of whatsoever nature, which is to be sold or supplied by the Seller under the contract.
- (d) "Services" means all work to be furnished by the Seller under the contract.

These Standard Terms and Conditions of Purchase shall apply to and form part of every contract of purchase entered into by the Purchaser. All orders are placed and executed on the understanding that the Seller is bound by these Standard Terms and Conditions of Purchase, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such order is accepted or purported to be accepted or made by the Seller.

No contract of purchase shall come into being unless and until the Seller has accepted these Standard Terms and Conditions of Purchase either expressly or by implication.

### **2. LIMITS OF CONTRACT**

The contract includes only such goods and services as are specified on the purchase order accompanying these Standard Terms and Conditions of Purchase.

### **3. PRICE**

- (a) Unless otherwise expressly agreed in writing, the price shall remain fixed throughout the period of the contract.
- (b) Unless otherwise specified, all prices stated are ex-Seller's works, and exclude all taxes, delivery, duty and insurance.
- (c) If there is no price quoted in the contract, then the price shall be a fair price, taking into account prevailing market conditions.

### **4. DELIVERY**

- (a) The Seller shall deliver the goods or services on the specified agreed delivery date shown on the purchase order. Time shall be of essence to the contract.
- (b) The Seller shall notify the Purchaser immediately if there is any anticipated delay in meeting the delivery date.

### **5. VARIATIONS**

The Purchaser reserves the right, before delivery, to issue an order amendment, adding to, deleting or modifying the goods and/or services to be sold or supplied under the contract.

## **6. PROGRESS AND INSPECTION**

(a) The Purchaser reserves the right to inspect and test the goods at any stage of manufacture, processing or storage and the Seller shall not unreasonably refuse any request to do so.

(b) If as a result of such inspection or testing, the Purchaser is not satisfied that the goods will comply with the contract, the Seller shall take all necessary steps to ensure compliance.

(c) Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the goods and the inspection or testing shall not diminish or otherwise affect the Seller's obligations under the contract.

## **7. PAYMENT**

(a) The Purchaser agrees to pay the contract price, plus any agreed additional charges for carriage, packing and Valued Added Tax according to the agreed credit facilities, provided the Seller has complied with its obligations under the contract.

(b) The Purchaser reserves the right to offset against payments to the Seller, any sum that is or may become due to the Purchaser by the Seller.

## **8. WARRANTIES**

(a) The Seller warrants that the goods and/or services supplied shall be free of defects in design, materials and workmanship, and shall be fit for the purpose required by the Purchaser, and in this respect, the Purchaser shall rely upon the Seller's skill and judgement.

(b) The Seller warrants that the goods and/or services shall comply with the specifications, drawings, samples or descriptions provided by either party, or if there is no information provided, shall comply with the Purchaser's reasonable requirements.

(c) The Seller warrants that the goods and/or services shall comply with all statutory requirements, regulations, quality assurance and industry standards and voluntary codes of conduct relating to the services supplied or the goods, including their manufacture, packaging and delivery.

(d) The Seller warrants that precise conformity of the goods with the contract is of the essence to the contract, and that the Purchaser shall be entitled to reject the goods if they are not in conformance with the contract, however slight the breach may be.

(e) The Seller warrants that the goods shall be new (unless specified in the contract).

(f) The Seller warrants to use reasonable skill, care and diligence in providing any service under the contract.

(g) If there has been any breach of the above warranties or any implied warranty during the period of twelve months from the date of delivery (or date as otherwise agreed), then the Seller shall remedy such defect by free of charge repair or replacement. The Seller shall be responsible for any associated costs of carriage.

(h) Each repair, replacement or substituted service supplied by the Seller shall itself be subject to the warranties as set out in Clauses 8 (a) to (g).

## **9. TERMINATION**

(a) The Purchaser shall be entitled to cancel the contract in whole or in part, by giving notice to the Seller at any time prior to the delivery of the goods, in which event the Purchaser's sole liability shall be to pay to the Seller fair and reasonable compensation for any work-in-progress at the time of cancellation, but such compensation shall not include loss of anticipated profits or any consequential loss.

(b) The Seller shall have the right at any time by giving notice in writing to the Seller to terminate the contract forthwith if:

- the Seller commits a breach of any of the terms and conditions of the contract.
- any distress, execution or other legal process is levied upon any of the assets of the Seller.
- the Seller enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made for its winding up, or if a receiver or administrator is appointed.
- the Seller ceases or threatens to cease to carry on its business.
- the financial position of the Seller deteriorates to such an extent that in the opinion of the Purchaser, the capability of the Seller to fulfil its obligations adequately under the contract has been placed in jeopardy.
- the Purchaser reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller.

(c) The termination of the contract, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination. The conditions, which expressly or impliedly have effect after termination, will continue to be enforceable notwithstanding termination.

## **10. REMEDIES**

Without prejudice to any other right or remedy which the Purchaser may have if goods or services are not supplied in accordance with or the Seller fails to comply with any of the terms of the contract, the Purchaser shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the goods or services have been accepted by the Purchaser.

- to rescind the contract, wholly or partially.

- to reject the goods (in whole or in part) and return them to the Seller at the risk of and cost to the Seller on the basis that a full refund for the goods so returned shall be paid forthwith by the Seller.
- to give the Seller the opportunity at the Seller's expense either to remedy any defect in the goods or services, or to supply replacement goods or services and to carry out any other necessary work to ensure that the terms of the contract are fulfilled.
- to carry out at the Seller's expense any work necessary to make the goods or services comply with the contract.
- to claim such damages as may have been sustained in consequence of the Seller's breach of contract.

## **11. INDEMNITY AND INSURANCE**

(a) The Seller shall indemnify the Purchaser against all loss, actions, costs, claims, demands, expenses and liabilities (including legal expenses) which the Purchaser may incur either by common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property which may be attributable to some defect in the goods or services supplied under the contract, other than as a result of any default or negligence by the Purchaser. This clause shall not be prejudiced by acceptance of breaches of Clauses 8 (a) to (h).

(b) The Seller shall hold satisfactory products and public liability insurance cover with an insurance company of repute for a minimum of £2 million and shall provide reasonable evidence of such insurance from time to time at the Purchaser's request. In the event that the Seller fails to supply such evidence, the Purchaser may affect such insurance and recover such cost from the Seller.

## **12. HEALTH AND SAFETY**

(a) Any goods or services supplied under the contract shall be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health and safety and the environment, and all goods will be supplied with full instructions for their proper use, maintenance and repair and with any necessary warning notices clearly displayed.

(b) The Seller agrees before delivery of the goods to furnish the Purchaser with written information of any harmful or potentially harmful properties or ingredients in the goods supplied, and thereafter information concerning any changes in such properties or ingredients.

(c) The Seller shall maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Purchaser, relevant British Standards, and statutory and regulatory bodies.

## **13. SERVICES ON THE PURCHASER'S PREMISES**

If the contract is for the provision of services on the Purchaser's premises, then the Seller shall ensure that the Seller, the Seller's employees or anyone

else connected with the Seller in the performance of the contract shall comply with:

- all current health and safety legislation.
- any regulations, rules or Company policy that the Purchaser may make aware to the Seller.

#### **14. RISK AND TITLE**

(a) The risk in the goods shall pass from the Seller to the Purchaser upon delivery of such goods to the Purchaser.

(b) The title to the goods shall pass from the Seller to the Purchaser upon delivery or upon payment for such goods, whichever is the earlier (and without prejudice to the Purchaser's rights of rejection under Clause 10).

#### **15. FORCE MAJEURE AND OTHER CIRCUMSTANCES**

(a) The Purchaser reserves the right to defer the date of delivery or payment or to cancel the contract or reduce the quantities of the goods ordered if it is prevented from or delayed in the carrying on of its business directly or indirectly through any circumstances beyond its reasonable control.

(b) Without prejudice to the generality of the Clause 15 (a), the following shall be included as being caused beyond the Purchaser's reasonable control:

- governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition
- Act of God, fire, explosion, flood, epidemic or accident
- import or export regulations or embargoes
- labour disputes, not including the workforce of the Seller
- inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour
- power failure or breakdown of machinery

#### **16. PURCHASER'S PROPERTY**

All tools, materials, equipment, dies, moulds, copyright, design rights or any other forms of intellectual property rights in drawings, specifications, and data supplied by the Purchaser to the Seller shall remain the exclusive property of the Purchaser, shall not be used by the Seller for any purpose not authorised by the Purchaser, shall be held in safe custody by the Seller at its own risk, and be maintained and kept in good condition by the Seller until returned to the Purchaser.

#### **17. CONFIDENTIALITY**

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by the Purchaser to the Seller and any other confidential information concerning the Purchaser's business or its products which the Seller may obtain, and shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Seller's obligations

to the Purchaser under the contract, and shall ensure that such employees, agents or subcontractors are subject to like obligations of confidentiality as bind the Seller.

#### **18. ASSIGNMENT**

The Seller shall not assign or transfer or purport to assign or transfer to any other person or corporation any of its rights or obligations, or subcontract any of its obligations under the contract without the prior written consent of the Purchaser.

#### **19. GENERAL**

(a) Each right or remedy of the Purchaser under the contract is without prejudice to any other right or remedy of the Purchaser whether under the contract or not.

(b) Any provision of the contract which is held by a competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the contract and the remainder of such provision shall not be affected.

(c) Failure of the Purchaser to enforce or partially enforce any provision of the contract will not be construed as a waiver of any of its rights under the contract.

#### **20. GOVERNING LAW & JURISDICTION**

The validity, construction and performance of the contract shall be governed by English law and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of the contract shall be subject to the jurisdiction of the Courts of England.

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