

Winter and Smith (electronics) Ltd. CONDITIONS OF SALE.

THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 17.

Any quotation given to a buyer or any order placed by a buyer are subject to the following conditions of sale.

1. Definitions and Interpretation.

1.1. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Buyer: the person or firm who purchases the Goods and/or Services from the Seller.

Conditions: these terms and conditions as amended from time to time in accordance with clause 2.3.

Contract: the contract between the Seller and the Buyer for the supply of Goods and/or Services in accordance with these Conditions.

Force Majeure Event: has the meaning given to it in clause 11.1.

Goods: the goods (or any part of them) set out in the Seller's quotation.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights which subsist or will subsist now or in the future in any part of the world

Services: the services supplied by the Seller to the Buyer as set out in the Seller's quotation or any specification agreed in writing by the parties.

Seller: Winter and Smith (electronics) Limited registered in England and Wales with company number 2600309.

1.2. In these Conditions, the following rules of interpretation apply:

1.2.1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.3. any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.4. a reference to writing or written including faxes and emails (where delivery is verified and read receipt generated).

2. Formation of Contract

2.1. The Seller shall sell and a Buyer shall purchase Goods in accordance with any order of a Buyer which is accepted by the Seller, subject to these Conditions, which shall apply to, and govern, all contracts to the exclusion of any other representations, conditions or terms subject to which a contract or order is made, or purported to be made, or stipulated, referred to, or implied by, a Buyer, or which are implied by trade, custom, practice or course of dealing.

2.2. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

2.3. No variation to these Conditions shall be binding unless agreed by the parties in writing.

2.4. Any typographical, clerical or other error or omission, in any document issued by the Seller, shall be subject to correction without any liability on the part of the Seller.

3. Orders

3.1. Acceptance of a quotation by a Buyer shall not constitute a contract but shall constitute an order for Goods and/or Services. No order or acceptance of a quotation received from a Buyer shall constitute a contract until accepted in writing by the Seller, at which date the Contract will come into existence.

3.2. No contract may be cancelled or suspended by a Buyer unless otherwise agreed by the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the seller as a result of such cancellation, such sums to be an immediate debt due from the Buyer.

3.3. The Seller may accept orders for phased or scheduled delivery (“scheduled orders”). The Seller reserves the right to consider as cancelled any outstanding order without liability if delivery requirements are postponed by more than six months and to make a cancellation charge calculated in accordance with clause 3.2. No amendment to a delivery requirement shall be accepted unless the Seller receives two months’ notice in writing.

4. Supply of Services

4.1. The Seller shall provide the Services to the Buyer in accordance with the Seller’s quotation and any specification for the Services agreed by the parties in all material respects.

4.2. The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Seller’s quotation and any specification for the Services agreed by the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

4.3. The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.

4.4. The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.

5. Buyer's obligations

5.1. The Buyer shall:

5.1.1. ensure that the terms of the Seller’s quotation, the Buyer’s order and (if submitted by the Buyer) any specification for the Goods are complete and accurate;

5.1.2. co-operate with the Seller in all matters relating to the Services;

5.1.3. provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

5.1.4. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

5.2. If the Seller's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (“Buyer Default”):

5.2.1. the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;

5.2.2. the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 5.2; and

5.2.3. the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

6. Prices

6.1. The price of the Goods and/or Services shall be the Seller’s quoted price. Unless otherwise stated all prices are exclusive of any Value Added Tax (“VAT”) for which the buyer shall be additionally liable to the Seller.

6.2. The Seller’s quotation shall specify whether the charges shall be on a time and materials basis, a fixed price basis or a combination of both.

6.3. all charges quoted to the Buyer shall be exclusive of VAT, which the Seller shall add to its invoices at the appropriate rate;

6.4. the Seller shall invoice the Buyer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned.

6.4.2. The Buyer shall pay the total price to the Seller (without deduction or set-off), as set out in the Seller’s quotation.

6.5. Any fixed price contained in the Seller’s quotation excludes:

6.5.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Seller engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Seller for the supply of the Services. Such expenses, materials and third-party services shall be invoiced by the Seller; and

6.5.2. VAT, which the Seller shall add to its invoices at the appropriate rate.

6.6. The seller reserves the right to:

6.6.1. by giving notice to the buyer at any time before delivery to increase the price of goods to reflect any increase in the cost to the seller which is due to any factor beyond the control of the seller (e.g. exchange fluctuation / currency regulation) any change in delivery date, quantities or specifications for goods which is requested by the buyer or any delay caused by any instruction of the buyer or failure of the buyer to give the seller adequate information or instructions;

6.6.2. increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12-month period.

6.7. All prices are given by the Seller on an ex-works basis. Packaging, carriage, transport, postal and insurance charges will be charged to the Buyer.

8. Payment

8.1. The Buyer shall pay the price of the goods in full (without set off or counterclaim) within 30 days of date of invoice. Time for payment shall be of the essence of the contract. If payment is not made in full and in cleared funds to a bank account on or before the due date without prejudice to any other right or remedy the Seller shall be entitled to:

8.1.1. cancel or suspend any contracts between the Seller and the Buyer and make a cancellation charge calculated in accordance with clause 3.2.

8.1.2. charge interest at the rate of 4% per annum above the base lending rate of Lloyds Bank plc, which shall accrue on a daily basis from the due date for payment until the date of actual payment.

8.2. The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Seller may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

9. Reservation of Title

9.1. Notwithstanding delivery, the Goods sold shall remain the absolute property of the Seller until payment of all amounts invoiced by the Seller to the Buyer for the Goods and Services that the Seller has supplied to the Buyer in respect of which payment has become due and outstanding from time to time, in which case title in the Goods shall pass at the time specified in clause 9.2, whichever is the earlier.

9.2. The Buyer has power to sell the Goods to independent third parties in arms-length sales in the ordinary course of business even though, pursuant to clause 9.1, title in the Goods has not passed to the Buyer. Any such sale shall be by the Buyer as principal and not as the Seller's agent and title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

9.3. If before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 12.1.3, then, without limiting any other right or remedy the Seller may have:

9.3.1. the Buyer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

9.3.2. the Seller may at any time:

9.3.2.1. require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

9.3.2.2. if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

9.4. Until title to the Goods has passed to the Buyer, the Buyer shall (a) hold all unsold Goods as bailee for the Seller and shall keep them separately stored, marked, insured and identified as the Seller's property (b) hold any proceeds of sale thereof in a separate bank account and in a fiduciary capacity for the account of the Seller (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods (d) maintain the Goods in satisfactory condition (e) notify the Seller immediately if it becomes subject to any of the events listed in clause 12.1.3 and (f) give the Seller such information relating to the Goods as the Seller may require from time to time.

10. Warranty

10.1. The Seller warrants that on delivery the Goods shall be as described in the Seller's quotation.

10.2. Except as set out in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

10.3. The Seller shall use reasonable endeavours to transfer to the Buyer the benefit of any warranty of guarantee given by the manufacturer to the Seller.

10.4. The Seller shall not be responsible for any software incorporated into the Goods which has not been loaded or installed onto the Goods by the Seller.

11. Force Majeure

11.1. The Seller shall not be liable to the Buyer for any loss or damage whatever or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods or Services if loss, damage, delay or failure was due to any cause beyond the Seller's reasonable control, which shall include, but not be limited to, the following:

11.1.1. import or export regulations or embargoes

11.1.2. strikes, lockouts or other industrial dispute of any person

11.1.3. difficulty in obtaining raw materials, labour, fuel, parts and machinery

11.1.4. power failure or breakdown in machinery, or default of a manufacturer or supplier

11.1.5. storm, fire, explosion, pandemic, plague, earthquake or other natural disaster

11.1.6. war, riot, civil disorder, act of terrorism

("Force Majeure Event").

12. Termination

12.1. Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:

12.1.1. the Buyer fails to pay any amount due under this Contract on the due date for payment;

12.1.2. the Buyer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

12.1.3. the Buyer, being a body corporate, passes a resolution or suffers an order of the Court to be made for winding up, or if a receiver, administrator or administrative receiver is appointed or, being an individual or partnership, suspends payment, propose or enter into any composition or arrangement with his or their creditors, or has a bankruptcy order made against him or them, or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction ;

12.1.4. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

12.1.5. the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

12.1.6. the Buyer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2. Without limiting its other rights or remedies, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 12.1.3, or the Seller reasonably believes that the Buyer is about to become subject to any of them.

12.3. On termination of the Contract for any reason:

- 12.3.1. the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- 12.3.2. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 12.3.3. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. Specification

- 13.1. If Goods are to be manufactured or any process to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damage, cost or expenses ordered against, or incurred by, the Seller in connection with, or paid, or agreed to be paid, by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property right of any other person which results from the Seller's use of the Buyer's specification.
- 13.2. The Seller reserves the right to make any changes in the specification in Goods which are required to conform with any applicable safety or other statutory requirement or which do not materially affect their quality or performance.

14. Indemnity

The Buyer shall keep the Seller fully and effectively indemnified against any liability which the Seller may incur (whether by proceedings or settlement) as a result of a claim against the Seller under Part 1 Consumer Protection Act 1987 in respect of an alleged defect in Goods arising directly or indirectly from the Buyer's actions or omissions.

15 Acceptance and returns

15.1 The Buyer may reject any Goods delivered to it that do not comply with clause 10, provided that:

15.1.1 notice of rejection is given to the Seller:

- (a) in the case of the delivery of an incorrect quantity of the Goods or a defect that is apparent on normal visual inspection, within three Business Days of delivery;
- (b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and

15.1.2 none of the events listed in clause 15.3 apply.

15.2 If the Buyer fails to give notice of rejection in accordance with clause 15.1, it shall be deemed to have accepted the quantity and quality of the Goods.

15.3 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 10 in any of the following events:

15.3.1 the Buyer makes any further use of those Goods after giving notice in accordance with clause 15.1.1;

15.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

15.3.3 the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;

15.3.4 the Buyer alters or repairs those Goods without the written consent of the Seller;

15.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

15.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

15.4 If the Buyer rejects Goods under clause 15.1 then the Seller shall, at its option:

15.4.1 repair or replace the rejected Goods; or

15.4.2 repay the price of the rejected Goods in full.

Once the Seller has repaired or replaced the rejected Goods or repaid the price of the rejected Goods, it shall have no further liability to the Buyer for the rejected Goods' failure to comply with clause 10.

15.5 Return of Goods sent in accordance with the Buyer's order cannot be accepted unless notice of rejection has been given in accordance with clause 15.1.1, the Seller has agreed to accept their return, the Goods do not conform with the manufacturers' published specification, and none of the events listed in clause 15.3 apply.

16. Confidentiality

A party (receiving party) 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 to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 17 shall survive termination of the Contract.

17. Limitation of liability: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

17.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:

- 17.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 17.1.2. fraud or fraudulent misrepresentation;
- 17.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 17.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 17.1.5. defective products under the Consumer Protection Act 1987.

17.2. Subject to clause 17.1:

- 17.2.1. the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information, or any indirect or consequential loss arising under or in connection with the Contract; and
- 17.2.2. the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid by the Buyer for the Goods and/or Services under the Contract.

17.3. This clause 17 shall survive termination of the Contract.

18. Export Terms

18.1. Where the Goods are supplied for export from the United Kingdom, the provision of this clause 18 shall (subject to any special terms agreed in writing between the Buyer and the Company) prevail over any other conflicting provision of these Terms and Conditions.

18.2. The Buyer acknowledges that it will not transfer Goods and data in contravention of United Kingdom, United States and European Union export laws.

18.3. The Buyer shall be responsible for complying with any legislation or regulations governing the importation into the country of destination and for the payment of any taxes, including VAT, and/or duties thereon, and for obtaining (at its own expense) any and all documents, certificates, licenses and authorisations necessary for the export and import of the Goods, and the Buyer will indemnify the Company in respect of any and all claims relating thereto.

18.4. Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered 'Ex-Works' (as defined by ICCs "Incoterms" in force when the Contract is made.) and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

18.5. The Company excludes all liability to the extent permitted by law for any costs, losses or damages resulting from the Buyer's use or attempted use of the Goods in countries other than the United Kingdom.

18.6. Payments of all amounts due to the Company shall be made by wire transfer to the Company or by such other means of payment as the Company may specify in relation to the Contract.

19. General

19.1. **Severance.** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.

19.2. Assignment and other dealings.

19.2.1. The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

19.2.2. The Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

19.3. Notices.

19.3.1. Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, or fax.

19.3.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.3.1 (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email (with email delivery/read receipt tracking enabled and verified), one Business Day after transmission.

19.3.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

19.4. Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19.5. No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

19.6. Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

19.7. Applicable Law. These Conditions and the contract shall be governed by and construed in accordance with English law and the parties acknowledge and accept the exclusive jurisdiction of the English Courts.