



In these terms and conditions “the Company” means Auwell Electronics Limited and “the Buyer” means the party with whom the Company is contracting and “goods” where the context so permits and requires, means services which the Company contracts to provide.

These terms and conditions apply from 1<sup>st</sup> Nov 2001, and supersedes all previous issues.

**1. THESE CONDITIONS APPLY**

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 modifications 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. PRICES**

- a) All prices quoted are based on the costs of the constituent element of manufacturing the goods (including materials and utilities, wages and currency movements) ruling at the date of quotation. If any specification or any such costs vary between that date and the date of delivery, the price of the goods may be increased by the Company to provide for such variations without prior notice.
- b) Unless otherwise stated, the prices quoted are exclusive of value added tax which will be charged at the rate and in the manner prescribed by law.
- c) 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.
- d) A quotation is available for acceptance for thirty days from the date thereof (unless differently stated on the quotation) and lapses, if not previously accepted, at the end of that time.

**3. QUANTITY**

- a) The price quoted is for the stated quantities only and not for materially lesser or greater quantities.
- b) Whilst every endeavour is made to deliver exact quantities, the Company reserves the right to deliver above or below the quantities ordered, if the variation is reasonable, having regard to the quantities ordered.

**4. DELIVERY & MANUFACTURING LEADTIME**

Unless a specific delivery date is stated, the delivery quoted will be a number of whole manufacturing days. The first whole manufacturing day is deemed to be when all contract and technical details allow manufacturing to commence by 08.00 on that day. The goods may be collected at the end of the last manufacturing day. Carriage or delivery does not constitute part of the manufacturing time quoted.

**5. SCHEDULE ORDERS**

- a) A Schedule Order shall constitute authority for the manufacture of the total goods in the Schedule Order when the Schedule Order has been accepted. The Buyer shall be obliged to take delivery of and pay for all goods specified in the Schedule Order. Each delivery of a scheduled order shall be considered a separate contract, and shall become payable as if it was a completed, non-scheduled order. The return of all specifications, patterns, drawings, dies, moulds, tools, phototools and the like required for the manufacture of subsequent scheduled deliveries will be held by the Company throughout the duration of the order.
- b) Goods comprised in a Schedule Order shall be delivered within twelve months from the date when the Schedule Order was accepted by the Seller.
- c) The minimum interval between the schedule delivery dates shall be 30 days, and the minimum notice for change in delivery requirements shall be eight weeks. All costs and losses incurred by the Company in respect of deferral of previously agreed deliveries shall be charged to the Buyer.
- d) The Buyer shall at all times be liable to pay to the Company all costs and losses incurred by the Company in respect of current scheduled total stocks, work in progress, special material and manufacturing tools.

**6. INVOICING & PAYMENT**

- a) 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 conditions 6(g) or extends the delivery in accordance with conditions 7(b), 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.
- b) In the case of contracts for the supply by the company of bespoke products, 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 the 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 any additional design, tooling or prototype manufacturing charges arising from changes in the Buyer’s requirement at the time of shipment of the first prototype.

- c) Unless the Company notifies the Buyer otherwise payment is due on the last day of the calendar month following the date of invoice.
- d) 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 there for or when any cheque or draft sent or delivered to the Company is cleared and the company's bank account credited with the proceeds thereof, and not at any earlier time.
- e) If the goods are for delivery abroad, the Buyer shall make payment by irrevocable letter of credit opened with a bank in the United Kingdom approved by the Company against the usual shipping documents.
- f) The Company reserves the right to charge interest at the rate of 3 (three) per cent per annum above the HSBC Bank Plc Base Rate for the time being on all overdue accounts from the due date until the date of actual payment.
- g) 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 work-in-progress and 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 of all other sums then due and payable to the Company by the Buyer has been made in full and/or may terminate the contract. Any delays caused to work-in-progress shall extend the due date of the goods to the Buyer.
- h) Time for payment is of the essence.

## **7. MANUFACTURING SPECIFICATIONS**

- a) If manufacturing tolerances or type of finish or materials to be used are not clearly defined in any specification or drawing supplied by the Buyer, the Company will manufacture to such tolerance and finish and with such materials as the Company in its discretion think fit.
- b) Where specifications are to be supplied by the Buyer they must be supplied on the first day of the contract being entered into. Delay in the supply of such specifications will entitle the Company to defer delivery of the goods by a period equivalent to the delay.
- c) Where any additional or changed information is submitted to the Company by the Buyer, the Company reserves the right to increase prices to cover any costs (including rework, scrap and overheads) incurred by the Company as a result of such alteration and/or to extend the delivery period.
- d) Where goods have been supplied to the buyer's specification, the company accepts no liability for any failure or defect in such goods and the Buyer shall indemnify the Company against all actions, claims, costs and proceedings, including claims that the specification or goods infringe(s) any patent, registered design, copyright or other industrial 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 stenographers errors on any drawings or specification provided by the Buyer.

## **8. DELIVERY**

- a) 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 be not 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.
- b) Charges will be made for abortive journeys undertaken on the Buyer's instructions. No restriction on the type of vehicle to be used required by the Buyer will bind the Company unless agreed by it in writing.
- c) Goods will be deemed to be delivered within seven days after the date of invoice, unless prior to the expiry of such seven days, the Buyer notifies the Company and any carrier in writing of non-delivery.
- d) The Buyer must notify the Company by telephone of any short delivery or loss or damage to goods in transit immediately upon delivery of the goods or of the invoice therefore (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 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.
- e) If any carrier for any consignment of goods receives an unqualified receipt therefore 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 mis-delivery or non-delivery thereof.

## **9. FAILURE TO TAKE DELIVERY**

- a) If goods manufactured to the Buyer's order are ready for delivery and the Buyer fails to take delivery at the time required by the contract the Company shall be entitled:
  - i. To invoice such goods forthwith; and
  - ii. 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.
- b) If the Buyer fails to take delivery within thirty days of 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 or otherwise dispose of the goods.

- c) Cancellation of any contract by the Buyer will be subject to cancellation charges, and will only be accepted by the Company upon such agreement.

#### **10. WARRANTY AGAINST DEFECTS**

- a) The Company warrants that all goods supplied are free from defect in material and workmanship provided that the Company's liability under this warranty shall be limited to making good without charge by repair of or, at the Company's discretion replacement of any goods in respect of which notice of the defect is given to the Company within six 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.
- b) The warranty contained in condition 10(a) 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.
- c) The warranty contained in condition 10(a) 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.
- d) The warranty contained in condition 10 (a) does not apply to and the Company accepts no responsibility for:
- i. Damage occurring in transit.
  - ii. Goods which have suffered or been subject to undue wear and tear, accident, misuse, improper application, neglect or overloading; or modified, serviced or repaired by the Buyer, Buyer's agent, Buyers Customer, or any other party.
  - iii. Consumable items.
- e) 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.

#### **11. RETENTION OF TITLE**

- a) 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 the goods in a fiduciary capacity as bailee for the Company.
- b) Notwithstanding the provisions of condition 11(a) 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.
- c) 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 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.
- d) 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.
- e) Without prejudice to any of the Company's other rights (whether to damages or under contract or otherwise howsoever) the Company may at any 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 thereby authorised the Company's servants and agents to enter into any premises of the Buyer for that purpose.

#### **12. RISK**

- a) Risk in the goods shall pass to the Buyer on delivery thereof.
- b) 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. COMPANY'S REMEDIES**

If the Buyer shall make default in any material respect of 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 by the Company (without prejudice to any other right to which it may be entitled):-

- a) May suspend or terminate the contract or any unfulfilled part thereof without prejudice to its existing rights thereunder;
- b) May stop any goods in transit;
- c) May recover from the Buyer 's premises any goods which are the property of the Company; and
- d) Shall be entitled to claim against the Buyer for any loss or damage sustained as a result of such suspension or termination.

#### **14. CONSEQUENTIAL LOSS**

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 of damage howsoever caused to the Buyer or to any other person.

#### **15. 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.

#### **16. CANCELLATION & RETURNED GOODS**

- a) No order may be cancelled by the Buyer without the prior written agreement of the Seller. If such an agreement is made, a charge to cover all materials and labour provisioned by the Seller in all work-in-progress at the date of cancellation, or a charge of 15% of the total outstanding value of the cancelled order, whichever be the greater, shall be made.
- b) Any bespoke product manufactured by the Company to specifications provided by the Buyer will not be returnable other than if they fail to meet the Buyer's original specifications.
- c) If the Company agrees to accept return of any supplied goods the Buyer shall be obliged to effect the return of such goods in good condition and at its own risk and cost.

#### **17. HEALTH AND SAFETY**

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 supplied.

#### **18. EXPORT ONLY**

- a) If the Company concludes the contract of carriage and/or arrange for the insurance of the goods for transit the Company shall be deemed to be acting solely as the Buyer's agent and subsections (22) and (3) of Section 32 of the Sale of Goods Act 1979 shall not be applicable.
- b) To enable the Company to export, before any despatch the Buyer shall furnish all necessary documentation and information for export and import authorisations and the Buyer shall be responsible for obtaining import authorisations.

#### **19. SPECIFICATIONS ETC**

Except as otherwise expressly agreed in writing, all specifications, patterns, drawings, dies, moulds, tools phototools and the like produced by the Company shall remain the property of the company, unless specifically requested by and paid for by the Buyer. Otherwise, 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.

#### **20. RIGHT TO SUB CONTRACT**

The Company reserves the right to subcontract the fulfilment of any order or contract, or any part thereof.

#### **21. 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, lockout, Act of God, storm, fire, earthquake, explosion, flood, confiscation, action of any government or government agency, or shortage.

#### **22. 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.

#### **23. 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 this contract will be payable without any reductions 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 claims by the Buyer.

#### **24. 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.

#### **25. HEADINGS**

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

#### **26. 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.

#### **27. THESE TERMS**

The Company reserves the right to alter or amend these Terms and Conditions of Sale at any time. Only the Terms and Conditions of Sale in force at the time of entering a contract will be binding. The Buyer is responsible for ensuring the latest issue of these terms is obtained.