

**DEFINITIONS**

- ‘the Seller’** = Alan Anderson Manufacturing Ltd
- ‘the Goods’** = the goods or services supplied or offered for sale by the Seller, or any part of them, including any components, parts, goods or material purchased or services supplied by the Seller to fulfil orders or the Contract .
- ‘the Purchaser’** = the buyer or any party who has agreed to buy the Goods.
- ‘the Prices’** = the prices for the Goods and any other charges specified by the Seller in the Contract exclusive of packaging, insurance, transport costs and VAT.
- ‘the Contract’** = the contract between the Seller and the Purchaser for the supply of the Goods which contract shall include any quotation, offer, proposal or tender and any acceptance, form or order all of which may form part of the Contract but without exception, shall be subject to the Conditions.
- ‘the Conditions’** = the Seller’s terms and conditions of sale (as amended from time to time) which shall apply to the Contract, without exception and which shall be conclusive and take precedence over any reference to any terms and conditions of the Purchaser, referred to by the Purchaser in any acceptance, order, acknowledgement or any other document from the Purchaser.
- “the Authorised Representative”** = a director or similar senior representative, authorised by a director of the Seller.

1. **GENERAL:** Unless otherwise stated in writing by the Seller only, the Conditions shall apply to the Contract to the exclusion of any other terms which the Purchaser may seek to impose or incorporate or which are implied by law, trade custom or course of dealing. In addition;
  - 1.1 The Purchaser’s acceptance of a quotation from the Seller and/or an order from the Purchaser shall constitute an offer by the Purchaser to purchase the Goods in accordance with the Conditions.
  - 1.2 The Purchaser shall ensure that the terms of the order are complete and correct.
  - 1.3 The order shall only be deemed to be accepted when the Seller issues written acceptance of the order at which point and on which date the Contract shall come into existence.
  - 1.4 The Goods are supplied by the Seller subject to the Conditions.
  - 1.5 The Conditions shall supersede any previous terms and conditions which may appear in catalogues, brochures or other tender documents from the Seller.
  - 1.6 The Conditions shall override, take priority and supersede any terms and or conditions stipulated, incorporated or referred to, either expressly or impliedly by the Purchaser and the Purchaser waives any right to rely on any term delivered with or contained in any documents of the Purchaser.
  - 1.7 The Contract, subject to the Conditions shall form the entire agreement between the Seller and the Purchaser and any prior statements, negotiations, representations or warranties (whether made innocently or negligently) shall be of no effect and each party agrees that it shall have no claim for innocent or negligent misrepresentation (or negligent misstatement) based on any statement in the Contract.

- 1.8 Any waiver by the Seller of any of the Conditions on any occasion must be in writing and shall act only as a waiver on that occasion and shall not affect the rights of the Seller to enforce any of the Conditions on any subsequent occasion.
- 1.9 Any delay or failure to exercise any right or remedy by the Seller shall not waive that or any other right or remedy nor shall it prevent the further exercise of that or any other right or remedy by the Seller.
- 1.10 Any variation of the Conditions must be in writing from the Authorised Representative only of the Seller and any claimed variation shall not otherwise be valid.
- 1.11 Subject to clause 12 below, any description of the Goods by the Seller shall be for identification purposes only and the use of any such description shall not constitute a contract for a sale by description.
- 1.12 For any provision of services by the Seller, the Seller shall use reasonable skill and care and charge either the Prices or if different, on a time and materials basis, at the Seller's complete discretion.
- 1.13 The Conditions exclude any third party rights under the Contracts (Rights of Third Parties) Act 1999.
- 1.14 The Contract may not be assigned by the Purchaser without the written consent from the Authorised Representative, but the Seller shall be permitted to use affiliates in the manufacture and delivery of the Goods.

## **2. PRICES AND DELIVERY**

- 2.1 All orders for Goods from the Purchaser shall be subject to the Conditions and shall be accepted for execution at the Prices which are current at the date of dispatch of the Goods.
- 2.2 The Prices shall be subject to change or withdrawal by the Seller without notice.
- 2.3 Unless otherwise stated, the Prices shall be exclusive of the cost of packing and delivery and of Value Added Tax where applicable.
- 2.4 The Prices shall be based on the costs of the Seller as at the date of the quotation, however, the Seller reserves the right, at any time, prior to delivery of the Goods to adjust the Prices to take account of any increase in the costs to the Seller of materials, labour services, currency fluctuations or any other factor whatsoever which has the effect of increasing the cost of the Goods to the Seller.

## **3. PAYMENT**

- 3.1 The Seller's terms of payment are strictly that the Purchaser's cleared cheque or transfer of funds must accompany or be made at the same time as an order unless a credit account has been agreed and established with the Seller. A credit account may only be agreed with the Purchaser on condition that the Purchaser accepts and agrees that all orders and the Contract are subject to the Conditions. Time for payment shall be of the essence under the Contract.
- 3.2 Where a credit account has been agreed and established with the Seller, payment must be made by the Purchaser (for each instalment of the Goods delivered) not more than 30 days after the end of the month of delivery (whether the Goods delivered are the whole or only part of the Goods ordered).
- 3.3 The Seller reserves the right at its complete discretion to refuse to agree, establish or to continue a credit account for the Purchaser, notwithstanding that a credit account may already have been agreed or established with the Purchaser and to withdraw established credit account facilities.

- 3.4 All amounts due from the Purchaser under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding on account of any purported claim by the Purchaser against the Seller under the Contract or any other contract.
- 3.5 Where the Purchaser has agreed to issue, provide or supply goods to the Seller (“free issue goods”) in order for the Seller to complete the Goods, the Purchaser shall issue, provide or supply such free issue goods in good time so as not to delay delivery of the Goods by the Seller. The Purchaser warrants to the Seller that such free issue goods are comprehensively insured and are and continue to be fit for purpose. In the event that the Purchaser fails to issue, provide or supply such free issue goods within the timeframe stipulated by the Seller, then the Seller shall be entitled to charge the Purchaser for the full quantity of the Goods in the order or the Contract at the Prices which the Purchaser shall then pay.
- 3.5 The Seller reserves the right at any time to suspend deliveries to the Purchaser, if payment for any order, related or otherwise, has not been made by the due date and remains outstanding or if the Seller’s performance of any of its obligations under the Contract is prevented or delayed by any act, omission or failure by the Purchaser to perform its obligations.
- 3.6 If at any time any sum of money becomes payable by the Seller to the Purchaser under or in connection with the Contract or any breach thereof by the Seller, the Seller shall be entitled, in addition to any other rights of set off conferred by law, to set off against such sum any amount then due, or which may at any time thereafter become due, to the Seller from the Purchaser under the Contract or any other contract, order or transaction between the Seller (or any such other company) and the Purchaser.
- 3.7 Without prejudice to the Seller’s other rights, interest at one per cent per calendar month (running from day to day) shall be payable by the Purchaser on any payment to the Seller, which is more than 30 days overdue until actual payment.

#### 4. **CANCELLATION**

- 4.1 No order may be suspended by the Purchaser in whole or in part after acceptance. No order may be cancelled by the Purchaser in whole or in part, after acceptance without prior agreement in writing from the Seller, in response to any notice purporting to cancel from the Purchaser.
- 4.2 Such written agreement may be given by the Seller, on condition that a cancellation charge shall first be paid by the Purchaser made up of up to 100% of the value of the order or of the remainder of the order outstanding, including the cost of the Goods purchased or ordered by the Seller or the Goods fully assembled, finished or partially built or stock on hand (including labour costs incurred), purchased or obtained by the Seller to enable the Seller to fulfil the order. Cancellation charges may also include reimbursement for Purchaser’s failure to meet any volume commitments or forecasts. Any quantity discount given for the Goods already delivered under that or any other order will be reduced to take into account the cancellation, and the amount of the reduction shall be payable by the Purchaser forthwith.
- 4.3 Any purported notice to cancel from the Purchaser shall not be effective until the cancellation charge has been paid by the Purchaser to the Seller, although the Seller shall be under no further obligation to continue to deliver the Goods to the Purchaser under the order.
- 4.4 Any defect in any delivery in the number or quality of the Goods shall not entitle the Purchaser to cancel the remainder of that order or the Contract or any other order or contract.

#### 5. **ERRORS**

5.1 Under no circumstances shall the Contract be invalidated because of printing or clerical errors.

## 6. **DELIVERY**

6.1 Any time or date quoted by the Seller for delivery of the Goods shall be given and intended as an estimate only.

6.2 Time of delivery shall not be of the essence.

6.3 Although the Seller shall make reasonable endeavours to meet an estimated time or date for delivery of the Goods, the Seller shall not be liable to make good any damage or loss howsoever arising, whether directly or indirectly out of any delay whatsoever in delivery and the Seller shall not be liable for any delay that is caused by a Force Majeure event, being any unforeseen or extraordinary event beyond the control of the Seller, which makes performance of the Contract impossible or impractical.

6.4 Unless otherwise agreed in writing, and in a Force Majeure event, the Seller shall be entitled to make partial deliveries of the Goods by instalments and the Conditions shall apply to each instalment. Each instalment shall constitute a separate contract and any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

6.5 Any deviation in quantity of the Goods delivered from that stated in the order or the Contract shall not give the Purchaser any right to reject the Goods or to claim damages and the Purchaser shall be obliged to accept the Goods delivered and to pay the Prices for the Goods at the rate in the Contract for the quantity of the Goods delivered.

6.6 If the Purchaser fails to take or accept the Goods, delivery of the Goods shall be deemed to have been completed at 9am on the third business day following the day on which the Seller notified the Purchaser that the Goods were ready for collection or to be delivered. The Seller shall not be obliged to accept any attempted rescheduling of delivery or collection by the Purchaser and the acceptance of any such rescheduling by the Purchaser (which must be given with a minimum of eight weeks notice in writing) shall be at the Seller's sole discretion.

6.7 If ten business days after the day on which the Seller notified the Purchaser that the Goods were ready for delivery or collection, the Purchaser has not taken or accepted delivery, the Seller may resell part or all of the Goods and after deducting reasonable storage and selling costs, charge the Purchaser for any shortfall below the Prices of the Goods.

6.8 If the Seller requires the Purchaser to return any packaging materials to the Seller, such packaging materials shall be returned to the Seller at the Purchaser's cost, within five working days of the Seller's request. The Purchaser agrees and accepts that any delay by the Purchaser in returning such packaging materials could delay the delivery by the Seller of the Goods.

## 7 **TRANSIT AND RISK**

7.1 The risk in the Goods shall pass on delivery to or collection of the Goods by the carrier (being a road carrier, freight carrier, or any carrier arranged by or acting on behalf of the Purchaser, or the Purchaser) whether the carrier has been engaged by the Seller or the Purchaser.

7.2 The risk in the Goods passes to the Purchaser as soon as the Goods are collected by or delivered to the carrier (as described above) or to the Purchaser from the premises of the Seller.

## 8. **INSPECTION**

8.1 The Purchaser may examine the Goods before delivery.

8.2 When the Goods are delivered to the Purchaser without previous examination, the Purchaser shall inspect them immediately on arrival and shall within 3 days from such inspection give the Seller written notice of any matter or thing by reason of which the Purchaser may allege that the Goods are not in accordance with the Contract. If the Purchaser shall fail to give such notice, the Goods shall be deemed to be in all respects in accordance with the Contract and the Purchaser shall be bound to accept and pay for them accordingly.

## 9. **TITLE AND RISK**

9.1 Legal title to the Goods shall remain with the Seller until such time as the Seller has received full payment for the Goods (in cash or cleared funds) supplied by the Seller to the Purchaser, whereupon such title shall pass to the Purchaser.

9.2 On any event where the Goods may be delivered to the Purchaser prior to the time when title passes to the Purchaser as aforesaid, the Purchaser agrees and accepts that it shall until such time as title passes, hold the Goods as the fiduciary agent and bailiff of the Seller and shall accordingly remain liable to account to the Seller for the Goods.

9.3 Until title passes to the Purchaser, the Purchaser shall store the Goods separate from any other goods of the Purchaser and of third parties so that the Goods may be easily identified and shall identify the Goods as the property of the Seller.

9.4 Until title passes, the Purchaser shall not remove any identifying marks or packaging on or relating to the Goods from the Seller.

9.5 Notwithstanding the retention by the Seller of legal title to the Goods, the Purchaser agrees that;

9.5.1 the risk in the Goods shall pass to the Purchaser on delivery to the Purchaser, the Purchaser's carrier or a carrier arranged by the Seller on behalf of the Purchaser, and

9.5.2 the Purchaser shall maintain the Goods in satisfactory condition, insure and keep them insured with comprehensive cover and arrange for the interest of the Seller in the Goods to be noted on all relevant insurance policies,

9.5.3 the Seller shall be entitled to maintain an action against the Purchaser for the Prices of the Goods or any part thereof, and

9.5.4 the Purchaser shall place the Goods at the disposal of the Seller (who shall be entitled to enter any premises of the Purchaser for the purpose of removing the Goods and to remove the Goods from the said premises).

## 10. **CONFIDENTIALITY**

10.1 The Seller and the Purchaser shall each keep confidential and shall not without the prior consent in writing of the other, disclose to any third party, any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the Goods or the Contract.

10.2 The Purchaser undertakes not to approach, nor to procure or facilitate that any of its affiliates or subcontractors approach, any of the suppliers to the Seller, (introduced by the Seller to the Purchaser), either directly or indirectly, for the purpose of securing the Goods at a lower price or on more favourable terms. In the event that either the Purchaser or any of its affiliates or subcontractors make any such approach and agree any such more favourable terms, the Purchaser agrees to pay the Seller within 30 days of receiving an invoice from the Seller, the Prices for the Goods as though the Seller had delivered the Goods to the Purchaser.

**11. UNFAIR CONTRACT TERMS ACT 1977**

11.1 If and to the extent that the Unfair Contract Terms Act 1977 applies to the Contract, no provision of the Conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for breach of the applicable warranties as to title and quiet possession implied into the terms and conditions of the Sale of Goods Act 1979, or of the Supply of Goods and Services Act 1982, as amended by the Supply of Goods and Services Act 1994 whichever Act applies to the Contract.

12. **DESCRIPTION AND DATA**

- 12.1 All specifications, drawings and particulars of weights, dimensions, capacity or other details provided by the Seller to the Purchaser (or provided by the Purchaser to the Seller) and signed by the Purchaser shall form part of the Contract.
- 12.2 If the description of goods in any correspondence, leaflet, invoice or catalogue varies from the manufacturer's description, the manufacturer's description shall be deemed to be the correct description and shall take precedence over any description by the Seller.
- 12.3 The Goods shall be supplied to the manufacturer's specification and finish.
- 12.4 Any description of the Goods is by way of identification only and the use of such description shall not constitute a sale by description.
- 12.5 The Seller shall use reasonable endeavours to ensure the accuracy of technical data or literature relating to the Goods, but the Seller (save, for death or personal injury) accepts no liability in contract, tort (including negligence or breach of statutory duty) or otherwise for any damage or injury arising directly or indirectly from any error or omission in such technical data or literature.

13. **GUARANTEE**

- 13.1 Any defects, which under proper use, appear in the Goods within a period of 12 months, ("the period") (unless otherwise stated) after delivery and which are due to faulty manufacture shall be made good by the Seller by replacement only provided that the Goods or the defective parts of the Goods are returned to the Seller, carriage paid and suitably packaged, within the period, together with a claim in writing which specifies the date of purchase.
- 13.2 None of the Goods may be returned for credit unless previously agreed with the Seller with a return material authorisation number (an RMA) which has been provided by the Seller to the Purchaser in advance of any such return.
- 13.3 The Seller's sole obligation and the Purchaser's sole remedy under this clause shall be limited to the cost of replacement of any of the Goods which are defective, irrespective of the nature of the claims, whether in contract, tort or otherwise.
- 13.4 This guarantee is provided by the Seller in substitution for all express or implied representations, conditions or warranties, statutory or otherwise, as to the state, quality, fitness for purpose or performance of the Goods (or any materials used in connection therewith) or the standard of workmanship and all such representations conditions and warranties are hereby excluded.
- 13.5 The Seller shall not be liable in any way whatsoever whether in contract, tort, in misrepresentation or under statute or common law or otherwise for any indirect, consequential or other loss, damage or injury howsoever caused and whether caused by the Seller's negligence which may arise out of or in connection with the supply of the Goods to the Purchaser, except for liability for death or personal injury arising from the Seller's negligence.
- 13.6 This guarantee does not apply to any of the Goods which have been subject to misuse (including static discharge), neglect, poor or inadequate storage or maintenance, accident or modification, adjustment,

calibration, up issue, rework or change in any way from their original form or which have been soldered or altered during assembly..

13.7 All of the Goods supplied by the Seller should be subject to sampling checks and testing prior to use or installation into equipment.

13.8 Where the testing equipment is supplied by the Purchaser and or the testing of the Goods is carried out by the Purchaser, the Purchaser warrants that the testing equipment is fit for purpose and that any such testing by the Purchaser shall be carried out with all reasonable skill and care. Further, the Purchaser warrants that it shall undertake a regular maintenance process at its own expense to ensure its testing equipment is properly calibrated and functioning within industry parameters. This guarantee shall not apply nor shall the Seller be liable for the Goods in any way whatsoever, if the Goods have passed the Purchaser's tests.

13.9 In relation to PCBA builds, the Purchaser accepts a pass rate of up to 98% for the Goods and there shall be no deduction from the Prices for up to a 2% failure of the Goods to meet this pass rate, for the first volume production run and 1% for each subsequent volume production run which percentages shall be deemed by the Purchaser to be de minimis.

#### 14. **LIMITATION OF LIABILITY**

14.1 Save in the case of personal injury or death caused by the negligence of the Seller, fraud or fraudulent misrepresentation or any liability that legally cannot be limited and other than as provided above, the Seller shall not be liable in contract, tort (including negligence on the part of the Seller), breach of statutory duty or otherwise for any loss, injury, destruction or damage suffered by the Purchaser whatsoever or howsoever arising out of or in connection with the supply of the Goods by the Seller.

14.2 If for any reason the Conditions or any part of them are of no or are of limited effect or if any clause is held to be unreasonable in respect of a claim against the Seller, the Seller's liability in respect of any such claim shall in no event exceed the Prices paid for the Goods by the Purchaser.

14.3 The Seller accepts no liability whether in contract, tort (including negligence on the part of the Seller), breach of statutory duty or otherwise, whatsoever or howsoever caused for;

14.3.1 any loss of use or corruption of software, business profits, contracts, sales or business, revenues or anticipated savings or loss of or damage to goodwill or

14.3.2 any special, consequential or indirect loss or damage of any nature whatsoever.

14.4 No liability whatsoever shall be incurred by the Seller in respect of any representation made by the Seller or his agents to the Purchaser or his agents before the Contract was made where such representation related to or referred in any way to;

14.4.1 the correspondence of the Goods to any description or

14.4.2 the quality of the Goods or

14.4.3 the fitness of the Goods for any purpose whatsoever.

#### 15. **INDEMNITY**

- 15.1 To the extent that the Goods are to be manufactured or supplied in accordance with any specification or goods supplied by the Purchaser, the Purchaser agrees to maintain full liability insurance, including product liability and undertakes to indemnify and keep indemnified the Seller against all royalties, claims, actions, demands, proceedings, losses, (including any direct, indirect or consequential losses) loss of profit, expenses, damages and costs (calculated on a full indemnity basis) suffered or incurred by the Seller arising out of or in connection with any claim made against the Seller whatsoever, including for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply of the specification, goods or the Goods. This clause shall survive cancellation or termination of the Contract.
- 15.2 The Purchaser warrants that it shall at all times maintain full product recall insurance and undertakes to indemnify and keep indemnified the Seller against all losses whatsoever or howsoever incurred as a result of any recall, claim, action, demand or proceedings suffered or incurred by the Seller arising out of or in connection with the supply of any specification or goods from the Purchaser or testing by the Purchaser.

## 16. U.S. EXPORT CONTROL REGULATIONS

The Seller shall in no circumstances be liable for any damage, loss or claim howsoever occasioned by any act or omission on the part of the Purchaser in contravention of any regulations issued by the United States Government concerning the export of goods, services or technology. Any of the Goods supplied by the Seller whose export from the United Kingdom is restricted by any aforementioned regulations shall not be exported by the Purchaser without the prior approval in writing of the relevant authorities concerned with the administration of such regulations.

## 17. BREACH AND FINANCIAL CONDITIONS

- 17.1 If any of the obligations of the Purchaser to the Seller are not fulfilled or if the financial status of the Purchaser deteriorates at any time such that the Purchaser does not, in the reasonable judgment of the Seller, justify continuance of the Contract on the Conditions, the Seller may without prejudice to any other rights it may have, cancel any outstanding order or the Contract or suspend any deliveries to the Purchaser of any of the Goods unless the Purchaser makes such payment for any of the Goods ordered as the Seller may require.
- 17.2 If an order and or the Contract is so cancelled or suspended by the Seller, the Purchaser shall indemnify the Seller on demand against all losses (including loss of profit), costs (including the costs of all labour and materials used for the Goods or purchased on behalf of the Purchaser to fulfil orders and the Contract and overheads incurred), damages, charges and expenses, suffered by the Seller arising out of the cancellation or suspension of the order and or the Contract.

## 18. TERMINATION

- 18.1 If the Purchaser commits any breach of the Conditions or
- 18.2 Suspends or threatens to suspend or ceases or threatens to cease to carry on all or a substantial part of its business or
- 18.3 Suffers distress or execution or becomes insolvent or commits an act of bankruptcy or enters into any arrangement or composition with its creditors or
- 18.4 Goes into or is put into liquidation (other than solely for amalgamation, or reconstruction while solvent) or
- 18.5 If a receiver or administrator is appointed over any part of the Purchaser's business, the Seller may by notice without prejudice to any rights which may have accrued or which may accrue to it, terminate the Contract.

18.6 Without affecting any other right or remedy available to it, the Seller may terminate the Contract with immediate effect by giving written notice to the Purchaser, if the Purchaser commits a material breach of any of the Conditions and (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so.

## 19. CONSEQUENCES OF TERMINATION

19.1 On termination of the Contract;

19.1.1 the Purchaser shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and;

19.1.2 in respect of the Goods supplied but not yet invoiced, the Seller shall submit an invoice which shall be payable by the Purchaser immediately on receipt.

19.1.3 in respect of the Goods which are partially built or partially completed or the subject of work in progress, the Seller shall submit an invoice which shall be payable by the Purchaser immediately on receipt.

19.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

19.3 Any of the Conditions that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 20. NOTICES

20.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be sent by email to the respective then current email address of the Seller or the Purchaser.

20.2 Any notice shall be deemed to have been received, if sent by email, at the time of transmission or if this time falls outside business hours at the place of receipt, when business hours resume.

## 21. GOVERNING LAW

The Conditions and the supply of the Goods, and the Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

## 22. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the supply of the Goods, the Contract or its subject matter or formation.