

CONDITIONS OF SALE

1 GENERAL

- 1.1 In these Conditions, (a) "the Company" means Lascar Electronics Limited (co. no: 05472682) whose registered office is at Module House, Whiteparish, Salisbury, Wiltshire SP5 2SJ; (b) "the Customer" means the person placing the order for the Goods; (c) "the Goods" means the goods the subject of a contract between the Company and the Customer; and (d) headings are inserted for the sake of convenience and do not affect the construction of these Conditions.
- 1.2 Unless otherwise agreed by the Company, the Goods are supplied on these Conditions to the exclusion of any terms or conditions stipulated by the Customer and of any representations, warranties or communications not expressly incorporated herein or in the Company's order acceptance. Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by an authorised representative of the Company is followed or acted upon entirely at the Customer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 1.3 The Customer's order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer's order shall only be deemed to be accepted when the Company issues a written acceptance of the Customer's order, at which point a contract between the parties shall come into existence.
- 1.4 Quotations submitted by the Company to the Customer shall remain valid for 30 days, unless otherwise specified by the Company.
- 1.5 No waiver by the Company of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 1.6 No person has authority on behalf of the Company to vary any of these Conditions except a Director of the Company and then only in writing signed by him/her.
- 1.7 These Conditions shall be construed and shall take effect in all respects in accordance with the law of England and Wales and the parties submit to the courts of England and Wales in relation to all disputes or differences concerning or relating thereto.
- 1.8 Unless otherwise agreed in writing by the Company the Goods may be partially or wholly outsourced at the Company's discretion.
- 1.9 The Customer and the Company will attempt in good faith to resolve any dispute arising under or in connection with these Conditions or the sale of the Goods. However if a dispute is not resolved through negotiation the parties will attempt in good faith to resolve the dispute through mediation or other dispute resolution technique recommended by the Centre of Dispute Resolution of London.
- 1.10 Any notice given hereunder by post, fax or e-mail to the recipient at his or its principal or registered office shall be deemed to have been properly served at the time when in the ordinary course of post or transmission it would reach its destination.
- 1.11 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 1.12 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the contract in accordance with its terms.
- 1.13 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.

2 DELIVERY

- 2.1 The time and place of delivery shall be as specified in the Customer's order and the means of delivery shall be in the absolute discretion of the Company.
- 2.2 The Company shall use all reasonable endeavours to meet delivery dates but shall be under no liability for failure to deliver on a specified date or within a specified period. Time of delivery shall not be of the essence of the contract.
- 2.3 The Customer shall pay to the Company the costs of packaging and delivering the Goods in addition to the purchase price.
- 2.4 If the Customer fails to accept delivery of the Goods the Company shall be entitled without prejudice to any other rights it may have to store the Goods at the cost and risk of the Customer.
- 2.5 If the Company is responsible for delivery, the Company will at its option either repair, replace free of charge or credit Goods lost or damaged in transit to a U.K. Customer, or to a British port for an export Customer, provided that the Customer notifies the Company within reasonable time of such loss or damage.
- 2.6 The Customer must notify the Company of any discrepancies between the despatch note and the delivered goods within 7 days of delivery, failure to do so will invalidate any Customer claim relating to incorrect invoicing by the Company.
- 2.7 Deliveries of up to 5 per cent above or below those specified shall be accepted by the Customer as conforming to contract and the price shall be adjusted accordingly.

3 INSTALMENTS

- 3.1 The Company shall be entitled to deliver the Goods by one or more instalments and in that event each such instalment shall be invoiced and paid for separately.
- 3.2 Where the Goods are delivered to the Customer by instalments or over a period and the Customer has failed to pay on its due date any invoice for Goods already delivered the Company shall be entitled (without prejudice to any other rights it may have) to suspend delivery of further instalments of Goods until all amounts outstanding to the Company

from the Customer shall have been paid or to terminate the contract in relation to Goods not yet delivered.

- 3.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract for the supply of the Goods as a whole as repudiated.

4 PRICES

- 4.1 The Company reserves the right to vary any prices quoted for Goods to take account of any variations in cost, including, but not by way of limitation, cost of materials, manufacture, labour, transport and any new or increased taxes, duties or other imposts.
- 4.2 Where a price quoted in sterling by us is stated in our quotation or order acknowledgment to be based on a particular exchange rate between sterling and another currency, the price quoted will be conditional on that rate not varying by more than 10 per cent between the date of quotation and the date of delivery. If the applicable exchange rate on the date of delivery differs by more than 10 per cent from the rate on which our quotation was based, the price shall be adjusted up (if the value of sterling has fallen) or down (if the value of sterling has risen) by the same percentage as the percentage change in the applicable exchange rate. Unless otherwise agreed, the exchange rate used for determining any price adjustment under this clause shall be the spot rate published in the Financial Times on the day of delivery.
- 4.3 Prices quoted are net ex works for U.K. trade and F.O.B. British port for export trade and exclusive of delivery and VAT and only apply to the total delivered quantities and delivery dates and rates specified.

5 PAYMENT AND INTEREST

- 5.1 The Goods (and any instalment in the case of delivery by instalments) shall be paid for within thirty days of the date of the relevant invoice. Time for payment shall be of the essence of the contract.
- 5.2 The prompt payment of the Company's accounts is a condition precedent of further deliveries and (without prejudice to any other remedies the Company may have in respect of overdue payments) the Company reserves the right to charge interest (as well after as before any judgement) at the rate of 4% per annum above National Westminster Bank Plc base rate for the time being in force on all sums overdue for payment by the Customer hereunder.

6 TITLE TO THE GOODS

- 6.1 The Goods shall remain the sole and absolute property of the Company as legal and equitable owner until all amounts owing to the Company by the Customer on any account whatsoever have been paid to the Company in full. Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee.
- 6.2 So long as the Goods remain the Company's property the Customer shall if the Company so requires keep the Goods separately stored and/or marked and insured at the Customer's expense so as to be clearly identifiable as the Company's property.
- 6.3 If the Goods are mixed with, or incorporated or processed by the Customer into other articles, such articles shall be separately stored and marked so as to be identifiable as being made from or with the Company's Goods and shall thereupon become the Company's property until such payment as aforesaid has been made.
- 6.4 The Company may at any time recover and resell the Goods (if in the Customer's possession and if the Goods have not been mixed with, or incorporated or processed by the Customer into other articles) if payment is overdue and for this purpose the Company's employees or agents may enter upon the Customer's or other premises upon which the Goods are situated. The Company may exercise the like rights of recovery resale and entry so long as any payment owed by the Customer on any account is overdue.
- 6.5 The risk of loss of or damage to the Goods shall pass to the Customer (in the case of a U.K. Customer) on delivery to the place of delivery as specified in sub-clause 2.1 hereof or (in the case of a non-U.K. Customer) on delivery to the appropriate British port (or, in the case of the articles referred to in subparagraph 6.3 hereof, shall be that of the Customer at all times after they come into being).
- 6.6 The Customer shall ensure that the Goods do not become subject to any charge, lien or encumbrance, but the Customer may resell the Goods to third parties in the normal course of business and the proceeds of any such resale shall belong to the Company to the extent that any payments referred to in paragraph (6.1) above remaining owing by the Customer, and the Customer shall be under a fiduciary duty to account to the Company for such proceeds. The Customer shall pay all such proceeds of sale into a separate designated trust account pending accounting to the Company thereof.
- 6.7 The Customer shall not be deemed to be the Company's agent for any purpose and shall indemnify the Company against any liability that the Company may incur to third parties (whether in contract, tort or otherwise, and including all the Company's expenses attributable thereto) in connection with the Goods, other than liability which would have arisen if the preceding paragraphs of this condition had not formed part of the contract of sale.

7 WARRANTY AGAINST DEFECTS

- 7.1 Any Goods which are of defective manufacture or which fail to attain any expressly guaranteed performance rating (subject to any specified tolerances) will be repaired or replaced free of charge, or credit will be given in respect of such Goods, at the Company's option, provided that:
 - 7.1.1 such defect or failure is notified to the Company in writing within 12 months after delivery or within 30 days after the defector failure shall have come to the notice of the Customer, whichever is sooner, or within 30 days after delivery in the case of any defect or failure which would have been apparent to the Customer if the Goods were inspected by the Customer on delivery (which inspection the Customer undertakes to make), and any Goods in respect of which no such notification is given to the Company shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to accept and pay for the same accordingly.

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- 7.1.2 in respect of Goods or parts not of the Company's manufacture the Company's responsibility shall be limited to any benefits which the Company may receive under any guarantee given by the supplier of such Goods or parts;
- 7.1.3 the Customer if so requested shall return the Goods carriage paid to the Company's works together with sufficient details in writing to enable the Goods and the alleged defect or failure to be clearly identified;
- 7.1.4 if the claim is not accepted the Company will so notify the Customer and hold the Goods for 14 days for the Customer's instructions, failing receipt of which the Company shall then be entitled to dispose of the Goods or store them at the Customer's expense without incurring any liability to the Customer;
- 7.1.5 repairs, alterations or modifications have not been made or attempted by anyone other than the Company;
- 7.1.6 the Goods have not been subjected to misuse, negligence or other accident.
- 8 LIABILITY**
- 8.1 Nothing in these Conditions shall limit or exclude the Company's liability for death or personal injury caused by negligence or fraud or fraudulent misrepresentation.
- 8.2 Subject to clause 8.1:
- 8.2.1 the Company's liability in terms of these Conditions is in lieu and to the exclusion of all other warranties, conditions or obligations imposed or implied by statute or otherwise in relation to the quality or description of the Goods or their fitness for any particular purpose, and all liability for any indirect or consequential loss (howsoever arising and including loss of profits) suffered or incurred by the Customer is hereby expressly excluded; and
- 8.2.2 the Company's total liability to the Customer in respect of other losses under the contract shall in no circumstances exceed 115% of the contract price.
- 9 DRAWINGS, ETC**
- 9.1 Unless otherwise specified in the Company's quotation all specifications, drawings and particulars of weights and dimensions submitted by the Company therewith are approximate only, and the descriptions and illustrations contained in the Company's catalogues, price lists and other advertisement matter are intended to present a general idea of the Goods described therein, and none of these shall form part of the contract. All specifications, drawings and technical descriptions submitted with or in connection with the Company's quotation are the copyright of and/or subject to the design rights (whether registered or unregistered) and/or subject to patent rights in favour of the Company. All such copyright and/or other material, and all information and "know-how" whenever supplied shall at all times be treated by the Customer as confidential and shall not without the Company's written consent be used by the Customer except for purposes of the operation of the Goods supplied thereunder, nor shall they without like consent be communicated to third parties save insofar as may be necessary for the purposes of operation.
- 9.2 The Company reserves the right to make any changes in the specification of the Goods without reference to the Customer which are required to conform with any applicable statutory or EU requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 10 CUSTOMER-SUPPLIED ITEMS**
- 10.1 Items to be supplied by the Customer must conform to specifications approved by the Company and be delivered as and when required in quantities sufficient to cover production of the Goods and the Customer shall indemnify the Company against any loss which the Company may suffer whether wholly or partially by reason of the Customer's failure to supply any such item in accordance with this Clause.
- 11 TOOLING**
- 11.1 Unless otherwise agreed in writing signed by both parties the Company shall retain full title and possession of all moulds and tooling of any kind (including but not limited to masks, screens, tapes, software, mechanical jigs and fixtures) used in the production of any Goods.
- 12 INTELLECTUAL PROPERTY**
- 12.1 The Customer shall not claim ownership of any patents, trade marks, trade names, copyrights or designs in relation to the Goods and shall not take any action which might infringe any patent, trademark, trade name, copyright or design or other form of protection for any invention, discovery, improvement, design mark or logo in relation to the Goods and the Customer shall indemnify the Company and keep it indemnified from and against all costs, claims, liabilities, proceedings, damages and expenses arising directly or indirectly as a result of any breach of the foregoing obligation by the Customer.
- 12.2 The Customer shall notify the Company immediately of any infringement or apparent or threatened infringement of or any actions, claims or demands in relation to any patent, trade mark, trade name, copyright, design or other form of protection for any invention, discovery, improvement, design mark or logo in relation to the Goods or any such patent, trade mark, trade name, copyright or design rights and the Customer shall provide the Company at the Company's expense with all assistance which the Company may reasonably require in connection therewith including but not limited to the prosecution of any actions which the Company may deem necessary for the protection of any rights in relation to the Goods or any such patent, trade mark, trade name, copyright or design rights and if so requested by the Company in relation to any claim or action brought against the Customer shall authorise the conduct of the same and of all negotiations for the settlement of the same by the Company.
- 12.3 The Customer shall indemnify the Company against all claims for infringement or alleged infringement of third parties patent or other intellectual property rights, and all costs and expenses incurred in connection therewith, arising from the execution of the Customer's order or otherwise in relation to the fulfilment by the Company of its obligations under the contract.
- 13 CANCELLATION BY THE CUSTOMER**
- 13.1 The Customer may cancel or vary any contract only with the prior written consent of the Company and in the event of such cancellation or variation the Customer shall indemnify the Company against any loss of profit which was within the reasonable and/or actual contemplation of the Customer as the likely result of any such cancellation or variation and any other reasonable costs and expenses of any kind which the Company may have incurred as a result of the cancellation or variation of such contract.
- 14 INDEMNITY FOR THIRD PARTY CLAIMS**
- 14.1 The Customer shall indemnify the Company against all claims for personal injury, loss or damage to property brought against the Company by third parties arising from the use of the Goods including without limitation any losses arising from any liability for defective products which shall have been caused directly or indirectly by the Customer and the cost of any legal action or proceeding associated therewith unless such injury, loss or damage is solely attributable to the negligence of the Company, its employees or agents.
- 15 FORCE MAJEURE**
- 15.1 The Company shall not be liable to the Customer or incur any penalties for the failure to perform or for the delay in the performance of any of its obligations hereunder where such failure or delay is due wholly or in part directly or indirectly to causes beyond its reasonable control including but not by way of limitation the failure of a third party to manufacture the Goods or deliver them to the Company.
- 16 ENTIRE AGREEMENT**
- 16.1 These Conditions constitute the entire agreement between the parties and supersede and extinguish all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to their subject matter. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in these Conditions. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in these Conditions.
- 17 TERMINATION BY THE COMPANY**
- 17.1 This clause applies if:
- 17.1.1 the Customer makes default in or commits any material breach of any of the Customer's obligations; or
- 17.1.2 the Company after using all reasonable endeavours is unable to design the Goods or to procure their manufacture; or
- 17.1.3 the Company after using all reasonable endeavours does not obtain satisfactory credit and trade references within 30 days of the Company's written acceptance of the Customer's order; or
- 17.1.4 any distress or execution is levied upon the Customer, the Customer's property or assets; or
- 17.1.5 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) has a bankruptcy order made against it or, (being a firm or company) becomes subject to an administration order or goes into liquidation (otherwise than the purposes of amalgamation or reconstruction); or
- 17.1.6 an encumbrancer takes possession of, or a receiver is appointed in respect of any of the property or assets of the Customer; or
- 17.1.7 the Customer ceases, or threatens to cease, to carry on business; or
- 17.1.8 the Company reasonably apprehends that any of the events mentioned in 17.1.4 to 17.1.7 above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 17.2 If this Clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to determine the contract forthwith without notice and the Customer shall thereupon indemnify the Company against all costs and expenses incurred by the Company in connection with the Customer's order and if Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.