

Arkle Electronic Systems

Conditions of Sales & Terms of Business

- 1 **Definitions**
- 1.1 The Buyer means the person, firm or company placing an order with the company.
- 1.2 The Company means Arkle Electronic Systems, its subsidiary or associate companies.
- 1.3 Products means all equipment materials and services which are subject of the buyer's order or which are to be supplied to the Buyer by the Company under these Conditions of Sale.
- 1.4 Contract means the contract for the supply of products formed by the company's acceptance of the buyers order.
- 1.5 Carrier means any person firm or company engaged by the company under a contract for the carriage of the product.
- 1.6 Assembly Service means the physical assembly by the Company, of a set of component parts (whether free issued by the Buyer or procured by the Company).
- 1.7 Manufactured Product means a set of component parts which have been procured by the Company and which form an assembly that has been put together and tested by the Company for sale as a complete working entity that meets the specifications referred to in the Company's quotation. In the absence of a comprehensive specification for the performance of the Manufactured Product, the Company's test will be to ensure the basic functioning of the Manufactured Product, in terms of outputs responding to inputs in a reasonable manner.
- 1.8 Gross Defects means a level of faults found on the Products supplied to the Buyer by the Company that is unreasonable, taking into account the technology of the Products being supplied. In terms of Contract Electronic and Cable Assembly Service the level of faults is expressed in parts per million (PPM) and refers to the number of unsatisfactory joints per million acceptable joints. The level at which the Company would consider an assembly to have Gross Defects is 50PPM or above. In general, the Company's fault level is substantially lower than this.
- 2 **Formation of Contract**
- 2.1 There shall be no contract unless the Company accepts the Buyers order by an Acknowledgement of Order form or by Verbal Acceptance or by pro forma invoice.
- 2.2 The prices, specifications, delivery times or any other information concerning the Products contained in any quotation given by the Company to the Buyer are commercial estimates only and are not binding on the Company and may be modified at any time without notice to the Buyer.
- 2.3 All orders are accepted subject to these conditions. No terms or conditions put forward by the Buyer or contained in any order form shall be binding on the Company.
- 2.4 The Buyer acknowledges that these Conditions and any specific details stated on the face of the Company's Acknowledgement of Order form or pro-forma invoice (and any additions or amendments thereto agreed in writing by the Company) constitute the entire subject matter of the Contract and that there are no other representations, warranties, Conditions, terms or obligations, whether written or oral, expressed or implied, by custom or otherwise. It is the responsibility of the Buyer to ensure that all such specific details are correct and accurate and discrepancies must be notified to the Company immediately upon receipt.
- 3 **Prices**
- 3.1 Unless the Company expressly agrees in writing the price for the Products shall be the price in effect at the time of shipment of the products.
- 3.2 In the event that the Company expressly agrees in writing that clause 3.1 above shall not apply and that there shall be a firm price for the products then (in addition to any other matter agreed in writing between the Company and the Buyer relating to the price for the Products):
- 3.2.1 if the Buyer fails to provide the Company within 3 working days after receipt of the Company's Acknowledgement of Order form, pro-forma invoice, or specific request (written or oral) with sufficient information and documentation (as the Company shall determine necessary) for the Buyer to proceed with the Contract forthwith or
- 3.2.2 if work under the Contracts is suspended or delayed due to the fault or neglect (including failure to make payment for the Products in accordance with clause 4 below) of the Buyer, its servants, agents or contractors, or any other cause beyond the reasonable control of the Company the Company shall be entitled to increase such firm price to cover any increased cost to the company caused by any such failure, suspension or delay.
- 3.3 Prices are exclusive of all VAT, taxes, duties and delivery charges, which shall be solely for the Buyers account.
- 4 **Payment**
- 4.1 Unless the Company shall allow the Buyer credit payment terms as an approved account in accordance with clause 4.2 below, payment of the price of the Products and in any event any tooling charge referred to in clause 6 below, shall be made in full by the Buyer to the Company in pounds sterling within 3 working days of receipt of the Company's Acknowledgement of Order form or pro-forma invoice accepting the Buyers order, and the Company's obligations under the Contract are wholly conditional upon such payment being made. All such payments may at the Company's option be appropriated to the Contract or any other contract between the Company and the Buyer then due for payment.
- 4.2 The Company may in its sole discretion designate the Buyer as an approved account and, in any such case, unless the Company shall otherwise direct, payment of the price for the Products shall be made in full by the Buyer to the Company in pounds sterling no later than 30 days from the date of invoice or the date of delivery of the Products to the Buyer whichever is earlier or, in the event that the Buyers shipping instructions are not received as required by the Company or shipment is held on the Buyer's request, of notification by the Company, that the Products are ready for delivery. The Company expressly reserves the right in its sole discretion to refuse to designate the Buyer as an approved account, to withdraw such designation at any time without notice and to require payment in accordance with clause 4.1 above notwithstanding such designation including, with respect to future deliveries of the Products, until full payment is received.
- 4.3 Notwithstanding clauses 4.1 and 4.2 above the Company may in its discretion agree to amortise the amount of any tooling charge as referred to in clause 6 over a stated quantity of the products within a stated period, save that the full amount outstanding of the total tooling charge (notwithstanding such amortisation) shall become immediately due and payable in the event that the Buyer fails to purchase for any reason whatsoever the said stated quantity of the Products within the said stated period.
- 4.4 Without prejudice to the Company's other rights in the event that any payment from the Buyer is overdue, the Company reserves the right to disallow any discount otherwise available to the Buyer thereupon and to charge interest and costs on any overdue payment to be added to the amount outstanding at a monthly rate of 5% compounded accruing on a daily basis until the company has received payment in full.
- 4.5 The Buyer Shall neither withhold payment of any amount due under the Contract in respect of any disputed claim for damage to the Products or any other alleged breach of contract by the Company, nor entitled to exercise a right of set-off.
- 4.6 The Company may cancel the Contract if the Buyer shall suffer any distress or execution to be levied on its goods or if it makes any arrangement with its creditors or enters into voluntary or compulsory liquidation, or has a receiver, manager or administrator appointed over any of its property or assets, or if the Buyer, being an individual shall commit an act of bankruptcy or have a receiving order made against him/her.
- 4.7 If any Payment from the Buyer under the Contract is overdue, the Company may suspend further deliveries under the Contract or any other contract with the Buyer and if such payment shall remain in arrears for more than 14 days the Company may cancel this Contract or any other contract with the Buyer in whole or in part without prejudice to its other rights and without incurring any liability to the Buyer.
- 5 **Design and Specifications**
- 5.1 All drawings, photographs, illustrations, performance data, dimensions, weights, and other technical information, specifications and details of the Products are published and supplied by the Company in the belief that they are as accurate as reasonably possible but are not to be treated as binding or as forming part of the Contract. It is the responsibility of the Buyer to ensure the accuracy of all such materials and information and the Company accepts no liability in this respect. All such material and information is copyright and may not be disclosed to third parties without the Companies consent in writing.
- 5.2 Where any order accepted by the Company is subject to the approval by the Buyer of drawings, prototypes or any other condition such approval shall not be unreasonably withheld or delayed.
- 6 **Orders to Customers Specifications**
- 6.1 In any case where the Products are to be manufactured to the Buyers specifications, the following provisions shall apply notwithstanding any conflicting provisions contained in these Conditions.
- 6.2 Notwithstanding the payment by the Buyer of any tooling charge, all such preparatory or pre production work and materials (including, without limitation, all masking, jigging, tooling, prototypes and the copyright and other intellectual property rights in all drawing, designs and specifications) shall be and remain the absolute property of the Company and the Buyer acknowledges that it has no right, title or interest therein.
- 6.3 In view of the difficulty in predicting yields with multi technology products, the Company reserves the right to increase/decrease delivery and invoice quantities from that acknowledged by up to 10%.
- 7 **Delivery**
- 7.1 All delivery times quoted are best estimates only and whilst the Company will endeavour to avoid delay, the Company shall under no circumstances whatsoever be liable to the Buyer for any loss or damage whether direct, indirect or consequential, arising from delay in the performance of the Contract. In the event of any delay attributable to the failure of the Buyer to provide information to the Company, to approve drawings or prototypes submitted by the Company or to take any other action reasonably required, the delivery time shall be extended accordingly.
- 7.2 If the Company is unable to perform the work or part of the Contract due to any cause or event beyond its reasonable control (including (without limitation) acts of God, acts of government, industrial action, severe weather, default of the suppliers or any other such cause or event whatsoever the Company may at its option by notice in writing to the Buyer cancel or suspend the Contract in whole or in part without liability and without prejudice to the Company's rights to receive payment of the price of all Products previously delivered or worked on already done.
- 7.3 The Company may deliver by instalments in such quantities as it may reasonably decide; such instalments shall be separate obligations and no breach in respect of one or more of them shall entitle the Buyer to cancel any subsequent instalments or repudiate this contract as a whole.
- 7.4 Unless the Company shall otherwise expressly agree in writing, delivery of the Products by the Company to the Carrier shall constitute delivery of the Products by the Company to the Buyer or, if Buyer's shipping instructions are not received as required, or shipment is held on Buyers request, delivery of the products will be constituted by packing and placement of the products in the Company's storage area or as the Company may determine. The Products shall be at the Buyers risk immediately on delivery to the Buyer or to the Carrier for the purposes of the Contract. The Company shall not be liable in any way whatsoever for any delay, breakage or damage to or loss of the Products after the Company has made delivery to the Carrier.
- 8 **Reservation of Title**
- 8.1 The Company shall retain title to the Products until it has received payment in full of all sums due to the Company for (a) the supply of the Products to the Buyer and (b) in connection with any other transaction with the Company whether or not related to the supply of the Products. For these purposes The Company has only received a payment when the amount of that payment is irrevocably credited to its bank account.
- 8.2 If any item of the Products owned by the Company is attached to, mixed with or incorporated into other goods not owned by the Company and is not identifiable or separable from the resulting composite or mixed goods, title to the resulting composite or mixed goods shall vest in the Company and shall be retained by the Company for as long as and on the same terms as those on which it would have retained title to the Products in question.
- 8.3 The Buyer shall store the Products owned by the Company in such a way that they are clearly identifiable as the Company's property and shall maintain records of such Products identifying them as the Company's property, of the persons to whom it sells or disposes of such Products and of the payments made by such persons for such Products. It will allow the Company to inspect these records and the Products themselves on request. All products supplied by the Company in the Buyers possession shall be presumed to belong to the Company (unless the Buyer can Prove otherwise).
- 8.4 The Company shall be entitled to trace the proceeds of sale and any insurance proceeds received in respect of the Products owned by the Company. Such proceed, shall be paid to a separate bank account and shall be held by the Buyer on trust for the Company.
- 8.5 If the Buyer fails to make payment to the Company when due, enters into bankruptcy, liquidation or a composition with its creditors, has a receiver, manager or administrator appointed over all or part of its assets, or becomes insolvent, or if the Company has reasonable cause to believe that any of these events is likely to occur, the Company shall have the right, without prejudice to any other remedies:
- 8.5.1 To enter without prior notice any premises where the Products owned by it may be, and to re-possess and dispose of any such Products owned by it so as to discharge any sums owed to it by the buyer.
- 8.5.2 to require the Buyer not to sell or part with possession of the Products owned by it until the Buyer has paid in full all sums owed by it to the Company;
- 8.5.3 to withhold delivery of any undelivered Products and stop any Products in transit. Unless the Company expressly elects otherwise any contract between it and the Buyer for the supply of the Products shall remain in existence notwithstanding any exercise by the Company of its rights under this clause.
- 8.6 The Products shall, once the risk has passed to the Buyer in accordance with clause 7.5 or otherwise, be and remain at the Buyer's risk at all times unless and until the Company has taken possession of such Products.
- 8.7 In addition to any right of lien to which the Company may by law be entitled, the Company shall upon the occurrence of any of the events described in clause 8.5 above be entitled to a general lien on all the goods of the Buyer in the Company's possession (although such goods or some of them may have been paid for) for the unpaid price of the Products or any other goods sold and delivered to the Buyer by the Company under this Contract or any other contract between the Company and the Buyer.
- 9 **Warranty**
- 9.1 Where the Company is producing a Manufactured Product for the Buyer and the phrase "Manufactured Product" is used to describe the products referred to in the quotation issued by the Company to the Buyer, the Company warrants to the Buyer that the Manufactured Product will be free from defects in workmanship and materials for a period of 12 months (the warranty period) from the date of invoice or the date of delivery to the Buyer whichever is earlier.
- 9.1.1 Where the Company is providing an Assembly Service to the Buyer (even though the Company may have supplied some or all of the component parts of the assembly) the Company shall not under any circumstances be responsible for the correct working of the Products supplied to the Buyer. It is the Buyers responsibility to make the Products work and to commission the Products accordingly. The Company warrants to the Buyer that the Products supplied as part of the Assembly Service will be free from Gross Defects in workmanship only, for a period of 12 months (the warranty period) from the date of invoice or from the date of delivery to the Buyer whichever is earlier. If the phrase Manufactured Product is not referred to on all quotations relevant to the Contract then the Contract will be deemed to be an assembly Service contract.
- 9.1.2 The warranty's referred to in 9.1 and 9.1.1 above shall be offered subject to the following conditions: the Buyer makes a full inspection of the Products within 5 working days of delivery to the Buyer and thereafter, within 3 working days, gives the Company written notice containing full particulars of any defects it discovers and the circumstances in which such defects occurred. The Company shall at its sole option EITHER repair, replace OR give a credit equivalent to the value of the Company's charge for any such Products which its examination confirms are defective within the warranty period and within the terms of warranty referred to in 9.1 OR 9.1.1 above PROVIDED that the Buyer has adhered to the payment provisions contained in clause 4 hereof and FURTHER PROVIDED that:
- a) the Buyer returns the defective Products to the Company (or its authorised service depot as directed by the Company) and pay all transportation charges, duties and taxes associated with the repair, replacement and return of the Products to the Buyer; OR
- b) If at the Companies option, the Company arranges for a technician to visit the Buyers installation to repair or replace the defective Products, the Buyer pays all the transportation charges for the technician and his equipment including any applicable duties and taxes, accommodation and living expenses and normal charges for the technician's time while travelling and for delays beyond the Company's reasonable control (save that the Buyer shall not be liable for any charge in respect of the technician's time on site actually engaged in carrying out the repair or replacement of such defective Products).
- 9.2 The repair or replacement of defective products during the warranty period in accordance with clauses 9.1 shall not as regards such products extend the warranty provided.
- 9.3 The provisions of clause 9.1 do not extend to any Products which have been subjected to misuse, accidents or improper installation, maintenance, application or operation nor do they extend to Products which have been repaired or altered otherwise than by agents or employees of the Company unless previously authorized in writing by the company.
- 9.4 THE WARRANTY CONTAINED IN THIS CLAUSE 9 IS EXPRESSLY ACCEPTED BY THE BUYER IN LIEU OF ANY AND ALL OTHER TERMS, WARRANTIES, CONDITIONS OR LIABILITIES WHETHER EXPRESSED OR IMPLIED, IN FACT OR IN LAW, RELATING TO THE STATE, QUALITY, DESCRIPTION, CAPACITY, DESIGN CONSTRUCTION, OPERATION, USE OR PERFORMANCE OF PRODUCTS OR OTHERWISE WHATSOEVER AND NO AGREEMENT VARYING OR EXTENDING THE SAME WILL BE BINDING UPON THE COMPANY.
- 9.5 UNLESS A DIRECTOR OF THE COMPANY SHALL OTHERWISE EXPRESSLY AGREE IN WRITING, IN NO CIRCUMSTANCES SHALL THE COMPANY'S LIABILITY TO THE BUYER FOR ANY BREACH OF WARRANTY CONTAINED IN THIS CLAUSE 9 EXCEED THE PRICE PAID FOR THE PRODUCTS WITH RESPECT TO WHICH ANY CLAIM IS MADE.
- 10 **Limitation of Liability**
- 10.1 SAVE AS EXPRESSLY PROVIDED IN CLAUSE 9 ABOVE, THE COMPANY SHALL HAVE NO LIABILITY WHATSOEVER TO THE BUYER WHETHER IN CONTRACT, TORT OR OTHERWISE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS OR DAMAGE OF ANY KIND SUFFERED OR INCURRED BY THE BUYER HOWSOEVER CAUSED OR ARISING, WHETHER FROM BREACH OR NON-PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THE CONTRACT OR FROM THE SUPPLY, INSTALLATION, PERFORMANCE, OPERATIONS OR USE OF THE PRODUCTS, EXCEPT LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM THE COMPANY'S PROVEN NEGLIGENCE.
- 11 **Infringement**
- 11.1 The Buyer warrants that any design or instruction furnished or given by it shall not be such as will cause the Company to infringe any letters patent, copyright, registered design or trade mark in the performance of the Contract, and the Buyer undertakes to indemnify the Company against all damages, penalties, cost and expenses to which the Company may become liable as a result of work done in accordance with the Buyers designs or instructions which involves the infringement of any letters patent, copyright, registered design or trade mark.
- 11.2 The Company make no warranty or representation whatsoever that the Products do not infringe any letters patent, copyright, registered design or trademark and accepts no liability in this respect.
- 12 **Assignment**
- The Contract shall not be assigned in whole or in part by, either party without written consent of the other party, except that the Company may assign as rights, liabilities and obligations to an associated company without prior written notice.
- 13 **Taxes**
- The Buyer shall promptly pay when due all taxes, duties and other charges upon the export, import, sale, purchase, ownership, possession or use of the Products. Any such taxes, duties or other charges paid by the Company shall be for the account of the Buyer and shall be set out on the Company's invoice.
- 14 **Waiver**
- The Company's failure to insist upon the strict performance of any of the Buyers obligations under the contract shall, not be construed as a waiver and shall not affect the company's right to require strict performance of such obligation.
- 15 **Costs of Enforcement**
- The Buyer shall pay to the Company all expenses, including legal costs on a full indemnity basis, incurred by or on behalf of the Company in enforcing the provisions of this Contract.
- 16 **Amendments or variation**
- No amendment or variation of any of these conditions is effective unless it is in writing and signed by a duly authorised director of the Company.
- 17 **Headings**
- Headings to the clauses in these Conditions of Sale are for ease of reference only and shall not reflect the construction of these Conditions.
- 18 **Severability**
- If any provision of these Conditions or any part thereof is found to be invalid or unenforceable, the invalidity or unenforceability of such provision or part shall not affect any other provision or the remainder of the provision in which such invalid or unenforceable part is contained, which shall remain in full force and effect.
- 19 **Notices**
- All correspondence for the Company shall be addressed to:
Arkle Electronic Systems, Unit 14 Wedgwood Gate, Wedgwood Way, Stevenage, SGI 4SU
- 20 **Governing Law and Jurisdiction**
- The Contract shall be governed by and construed in accordance with the laws of England and the Buyer agrees to submit to the non-exclusive Jurisdiction of the English Court.
- 21 **Data Protection Act**
- The company may transfer information about you to its financiers, who:
- a) May use, analyse and assess information about you, including the nature of your transactions, and exchange such information with other members of their group of companies and others for credit or financial assessment, market research, statistical analysis, insurance claim, underwriting and training purposes and in making payments and servicing their agreement with us;
- b) From time to time may make searches of your record at credit reference agencies where your record with such agencies may include searches made and information given by other businesses; details of their searches will be kept by such agencies but will not be seen by other organizations that may make searches; May give information about you and your indebtedness to the following:
Our or their insurers for underwriting and claims purposes;
Any guarantor or indemnifier of your or our obligations to enable them to assess such obligations;
From banks or any advisers acting on their behalf;
Any business to which your indebtedness or our arrangements with our financiers may be transferred – to facilitate such transfer;
- d) May monitor and/or record any phone calls you may have with them, for training and/or security purposes;
- e) In the event that they transfer all of any of their rights and obligations under their agreement with us to a third party, may transfer information about you to enable the third party to enforce their rights or comply with the obligations.
- We will provide you with details of our financiers on request, including a contact telephone number if you want to have details of the credit reference agencies and other third parties referred to above from whom the obtain and to whom they may give information about you. You also have a right to receive a copy of certain information they hold about you if you apply to them in writing, however a fee will be payable.