

TERMS AND CONDITIONS OF SALE

1.0 Interpretation

1.1 In these conditions: "BUYER" means the person who accepts a quotation from the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller. "GOODS" means the goods (including any instalments of the goods or any parts for them) or Services which the Seller is to supply in accordance with these conditions. "SELLER" means Topline Electronics Ltd whose registered office is at Unit A8 Ropemaker Park, Diplocks Way Industrial Estate, Hailsham, East Sussex, BN27 3GU. 'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in writing between the Buyer and the Seller. 'CONTRACT' means the Purchase Order or Contract for the purchase and sale of the Goods or Services.

1.2 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2.0 Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation from the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case of these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted, or purported to be accepted, or any such order is made or purported to be made by the Buyer. The giving of an order by the Buyer shall be deemed to be an acceptance of these terms by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer's or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

3.0 Orders and Specifications Returns

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellations.

3.4 At the discretion of the Seller any Goods ordered incorrectly by the Buyer, or found to be surplus to the Buyer's requirements, shall be subject to a 30% or £100.00, whichever is the greater, re-stocking charge by the Seller subject to agreement in writing from the Seller. The Seller will not accept perishable items for re-stocking. The Buyer will return all such goods at their own cost. The original delivery costs will not be reimbursed.

3.5 Used or damaged Goods will not be accepted for return by the Seller.

3.6 Special orders (i.e. items not normally stocked) cannot be cancelled once submitted by the Buyer and accepted by the Seller.

3.7 Cancellation of a scheduled engineer's visit requires the buyer to provide 24hrs notice. Cancellation of any visit with less than 24hrs notice will incur the full order invoice value.

4.0 Price of the Goods

4.1 The price of the Goods shall be the Sellers quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order (Where the Goods are supplied for export from the United Kingdom, the Seller's published price list shall also apply). The Seller specifically excludes any and all Import Duties and Taxes, Export Documentation, Certificates of Origin, Freight Costs and Freight Insurance unless agreed in writing at the time of quotation.

4.2 The Seller reserves the right, (by giving notice to the Buyer) at any time before delivery, to increase the price of the Goods to reflect any increase in the cost alteration of duties), significant increase in the costs of labour, material or other costs of manufacture.

4.3 Except as otherwise stated under the terms or any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5.0 Terms of Payment

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after the Seller has been notified by the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) when it submits its order to the Seller notwithstanding that an invoice has not been submitted, delivery may not have taken place and the property in the Goods has not passed to the Buyer unless otherwise agreed in writing by the Seller. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the statutory 8% above the prevailing base rate of the National Westminster Bank and any further recovery costs from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). At the point of an invoice becoming overdue for payment all other outstanding invoices will also become immediately due.

5.4 The Seller shall charge the Buyer £20.00 for each re-presentation of the Buyer's dishonoured cheques.

6.0 Delivery

6.1 Delivery of the Goods shall be deemed complete upon the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods to that place are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be "of-the-essence" unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance to the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 The Seller reserves the right to deliver the Goods with the variance of up to 5 per cent more or 5 per cent less than the quantity size or weight ordered without any adjustment in the price.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver anyone or more of the instalments in accordance with these Conditions or any claim made by the Buyer in respect of anyone or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 The Buyer shall inspect all goods immediately upon delivery.

6.5.1 The Buyer shall give written notice to the Seller and any carrier immediately of any failure of the goods to comply with the contract (i.e. damaged goods).

6.5.2 Where the Buyer has not received any goods despatched by the Seller, it shall give written notice to the Seller within seven days of having been notified of despatch.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy, the Seller may:

6.6.1 Store the Goods until actual delivery and charge the Buyer for the reasonable storage costs (including insurance); or

6.6.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7.0 Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection, or;

7.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the Title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods.

7.3 Until such time as the Title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4 Until such time as the Title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been sold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8.0 Warranties and Liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will in material respects correspond with their specification at the time of delivery and will be free from defect in material and workmanship for a period of 365 days from delivery. The Seller shall at its option, repair or replace free of charge any goods which in the Seller's opinion are faulty.

8.2 The above warranty is given by the Seller subject to the following conditions;

8.2.1 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), alteration or repair of the Goods without the Seller's approval;

8.2.2 The Seller shall be under no liability if the goods have been installed, commissioned or serviced by persons other than the Seller or approved agents;

8.2.3 The Seller shall be under no liability in respect of incorrectly specified products; it is for the Buyer to ensure that the product is correctly specified and installed in accordance with the manufacturer's guidelines for its intended use.

8.2.4 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

8.2.5 Excepting Mandatory Regulations to the contrary, the expenses for return and re-shipment of the defective materials shall be paid by the Buyer.

8.2.6 Those products or spare parts which are described as Consumables, with a defined life expectancy less than the described warranty period, are expressly excluded from the warranty period, unless it can be demonstrated that a catastrophic failure in the materials or workmanship has significantly reduced that life expectancy. In which case, The Buyer will purchase a replacement at a pro-rata price, based upon the benefit taken during the usage period.

8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these Conditions).

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specifications shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.) If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall not have liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. (Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control;

8.8.1 Act of God, explosion, flood, tempest, fire or accident;

8.8.2 War or threat of war, invasion, sabotage, insurrection, civil insurrection or requisition;

8.8.3 Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.8.4 Import or export regulations or embargoes;

8.8.5 Strikes, lockouts, other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.8.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7 Power failure or breakdown in machinery.

9.0 Insolvency of Buyer

9.1 This clause applies if:

9.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 An encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Buyer; or

9.1.3 The Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies, then the Seller shall be entitled, without prejudice to any other right or remedy, to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price of the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10.0 Services – PPM Contracts & Installations

10.1 The Company warrants that it will use reasonable care in performing the Services

10.2 If any part of the Services is performed negligently or in breach of the provisions of the Contract or these Conditions then, at the request of the Customer (if the request is given within one month of the provision of the Services), the Company will re-perform the relevant part of the Services, always subject to Clause 10.4 and Clause 8 herein.

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

10.4 Controller 'upgrade' offer pricing provides for a replacement controller at a discounted cost. The old controller cannot be put to use elsewhere if upgraded at the offer price, and will become the property of Topline Electronics Limited upon completion of the works. The old controller will be removed from site and disposed of, in accordance with WEEE regulations, as part of the discounting offer.

10.5 The Company expressly does not warrant that any result or objective, whether stated in the Order or otherwise, shall be achieved, be achievable or be attained at all or by any given or any other date.

10.6 The Customer shall be responsible for ensuring adequate access to the installation site to enable installation to take place. The Customer shall ensure that the site is ready in all respects for the installation, and has available all appropriate facilities and utilities. Where a specific completion date is required by the Customer, the Company may require access to the site outside normal working hours in which case the Company shall not be liable for any additional cost incurred by the Customer or any third parties.

10.7 The Company reserves the right to charge an additional fee if the Customer delays installation, prior to commencement, by more than one month after the schedule date of installation requested. This fee will be based on the sales contract value of the goods in storage multiplied by a percentage equal to 8% above the prevailing base rate of the National Westminster Bank.

10.8 The Sellers prevailing day rate, per engineer, will be charged for works cancelled without notice.

11.0 General

11.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any subsidiary or holding company or other subsidiary of its holding company.

11.2 The Sellers obligation to fulfil the contract is subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

11.3 The Buyer undertakes that they shall not at any time during the performance of the contract use nor divulge any of The Sellers trade secrets, techniques, methods of carrying on business or the terms of the contract ("Confidential Information") to any person except for those directors, officers, employees and professional advisers within The Buyers company who need to know for the purpose of performing your obligations under the contract.

11.4 Any provision in these terms and conditions which is void or unenforceable in any applicable jurisdiction shall, to the extent of such invalidity or unenforceability, be deemed severable, and shall not affect any other provisions hereof. compliance therewith, nor shall the same constitute a waiver or estoppel.

11.5 The Buyer may not assign, transfer or novate (whether in whole or in part) the benefit of the contract. The Seller shall be entitled to assign some or all obligations and rights under this contract to any other group company within The Sellers group without The Buyers consent.

11.6 Any notice or information required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices or information may be given by hand or sent by registered post or recorded delivery. Any notice sent by post shall be deemed to have been given on the second working day after posting; and proof that any such notice or information was properly addressed and posted shall be sufficient evidence that such notice has been duly given.

11.7 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same; or any other provision.

11.8 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.9 The Contract shall be governed by the laws of England.

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