

CONDITIONS OF SALE

1. CONDITIONS OF CONTRACT

In these Conditions of Sale "the Seller" shall mean ASTUTE ELECTRONICS LTD and/or its successors, assignees, sub contractors and agents, "the Buyer" shall mean any person or persons firm or firms company or companies authority or authorities who shall order or buy the Goods and shall include his of their successors, executors and personal representatives, "the Goods" shall mean the components, equipment, goods and/or material supplied or sold by the Seller in terms of any individual contract (including all replacements and renewals thereof and all accessories and additions thereto whether added or made before or after the date of the relative order) and "the Contract" shall mean the contract for the sale or supply of the Goods by the Seller to the Buyer.

2. CONTRACT

No quotation by the Seller shall constitute an offer. No order placed with the Seller shall be binding on the Seller or deemed to be accepted by the Seller unless and until written and unqualified acknowledgement and acceptance of such order is issued to the Buyer by the Seller. The contract between the Buyer and the Seller shall be governed in all respects by these Conditions of Sale. The Seller shall not be bound by any terms or conditions set out in the Buyer's order and these Conditions of Sale shall supersede and prevail over any other terms or conditions stipulated or referred to by the Buyer. No previous correspondence, writings, telexes, telegrams or verbal communications between the Buyer and the Seller regarding the Goods shall form any part of or be incorporated into the contract.

3. PRICE

- (a) The price(s) of the Goods as quoted or otherwise intimated by the Seller to the Buyer are based upon the prices and costs of raw materials, labour, transport, overhead expenses, insurance, taxes, levies, duties, tariffs and similar charges affecting the Goods and current at the date of the Seller's quotation but may be varied by the Seller to take account of any increase in any of such prices, costs or charges which may occur at any time before the contract is fulfilled. Any alteration by the Buyer in design, quantities or specification and any suspension of work following on the Buyer's instructions or any failure by the Buyer to give timely instructions will give rise to adjustment of the price(s) if the Seller's cost of manufacture is thereby increased: In any such case the price(s) to be paid by the Buyer shall, instead of the price(s) quoted, to the price(s) ruling at the date of delivery of the Goods. Provided, however, that where the words "fixed price" appear in relation to any price quoted and the Seller agrees to supply the Goods at that price within a specified period from the date of the quotation the Goods will be charged at such price which shall not be subject to variation within the period to which the fixed price relates.
- (b) Quotations are based on the Buyer's specifications as given to the Seller and the Seller shall not be responsible in any manner whatsoever for the sufficiency or otherwise of the Goods supplied on the basis of the Buyer's specifications. The Buyer shall be liable to pay for all of the Goods manufactured by the Seller in accordance with such specifications notwithstanding that the Buyer has provided erroneous information within his specifications.
- (c) Quotations of price will normally be given by the Seller in pounds sterling, but in the event of a quotation being given in a currency other than sterling and the exchange rate on the date on which any payment falls due being different from that on (a) the date of the Seller's quotation or (b) the date of acceptance of the Buyer's order whichever is the earlier then the Seller shall have the right to make such adjustments as it may reasonably consider necessary to take account of such difference.
- (d) All prices quoted are strictly net. In addition to the quoted price the Buyer shall pay (i) delivery charges (ii) Value Added Tax where applicable and (iii) the cost to the Seller of carrying out any special test, examination or inspection required by the Buyer.

4. PACKING

All packing materials are non-returnable unless otherwise specified in the Seller's quotation.

5. DELIVERY

- (1) Unless otherwise agreed in writing between the Buyer and the Seller the Seller shall be entitled to supply the Goods by part-deliveries.
- (2) Where supply of the Goods is effected by part-deliveries each such delivery shall (for the purposes of this Clause) be treated as if it arose from a separate and independent contract but any delay, default or failure by the Seller in respect of any such part-delivery shall not entitle the Buyer to cancel the remainder of the contract.
- (3) Failure by the Buyer to pay for any part-delivery when payment falls due shall entitle the Seller to withhold delivery of the remainder of the Goods.
- (4) The Buyer shall accept delivery of the Goods or any part thereof within a period of 7 days of delivery notified by the Seller that such of the Goods are available for delivery. If the Buyer shall fail to accept delivery as aforesaid the Seller shall be entitled:-
 - (a) to charge interest to the Buyer at a rate of 4% per annum above Lloyds Bank plc base rate for the time being (such interest being calculated daily and charged monthly by the Seller and payable by the Buyer on demand by the Seller) and
 - (b) to make a storage charge against the Buyer at a rate equivalent to 10% per annum on all sums due to the Seller in terms of the contract and for the time being unpaid in respect of the period from the expiration of the said period of 7 days until delivery of the Goods or the relative part-delivery(ies) thereof is accepted by the Buyer.

6. DELIVERY AND PASSING OF RISK

The Seller shall deliver the Goods or any part thereof to the Buyer at the place specified overleaf or f.o.b. at such other place in the United Kingdom as the Buyer directs; risk of loss, damage or destruction of the Goods or such part thereof shall pass to the Buyer immediately after the Goods or such part thereof leave the Seller's premises.

7. DELAY IN DELIVERY OR COMPLETION

Any delivery date given by the Seller to the Buyer is the Seller's approximate business estimate of the date on which the Goods will be delivered to the Buyer and the Seller will make every reasonable endeavour to meet such delivery date. Delivery dates are not, however, subject to any condition, guarantee, warranty or representation and, unless otherwise agreed in writing between the Seller and the Buyer, time shall not be of the essence with regard to delivery in the contract and there shall be no liability (in contract or otherwise howsoever) upon the Seller in respect of any loss or damage including consequential loss or damages incurred by the Buyer arising from any delay in delivery of the Goods or any part thereof nor shall the Buyer be entitled to refuse to accept delivery or to repudiate or cancel the contract as a result of any delay in delivery of the Goods or any part thereof. Late delivery shall not affect the obligation of the Buyer to pay the price of the Goods.

8. QUANTITIES

The Seller reserves the right to deliver to the Buyer up to Five per cent (5%) more or less than the exact quantities of the Goods specified in the contract and the Buyer shall be liable to pay for all of the Goods so delivered.

9. PAYMENT

Unless otherwise agreed in writing between the Seller and the Buyer payment of all sums due to the Seller in terms of the contract shall be made within 30 days of the date of the invoice issued in respect of the Goods and time shall in respect of payment be a material condition in and of the essence of the contract.

Where the Goods are supplied by part-deliveries the Seller shall be entitled to invoice each part-delivery as and when delivery thereof has been made and payment of all sums due in respect of each such part-delivery shall be made as aforesaid notwithstanding the non-delivery of any other part of the Goods or any default or delay on the part of the Seller. In respect of any of the Goods to be delivered to the Buyer or its nominees at an address overseas, and unless otherwise agreed in writing, payment of the price and any additional overseas shipping and/or transportation charges insurance storage standing charges or other additional costs shall be paid by the Buyer prior to the despatch of the Goods or any part thereof by the Seller by means of an irrevocable Letter of Credit opened with a Bank approved by the Seller or by such other means as may be agreed in writing between the Buyer and the Seller. The Seller shall have the right to charge interest (which shall accrue from the day to day) on all sums which may at any time be overdue for payment in terms of the contract (from the time such sums become due for payment until such sums have been paid to the Seller in full) at the rate of 4% per annum above Lloyds Bank plc base rate from time to time such interest shall be calculated daily and shall be charged monthly by the Seller and be paid by the Buyer on demand by the Seller.

10. PASSING OF PROPERTY

(a) Unless otherwise agreed in writing between the Seller and the Buyer property and title in the Goods shall not pass to the Buyer until the whole price therefore and all other sums due in terms of the contract for the sale or supply of the Goods has been received by the Seller. Where the goods to be supplied in terms of the contract are supplied by part-deliveries this Clause will apply to each part-delivery as if it formed the subject matter of a separate and independent contract. Until the whole price of the Goods has been paid the Buyer will hold and store the Goods (in so far as the Goods or any of them have not been sold by it) as agent for the Seller and in a manner which clearly distinguishes them from other goods of the Buyer and indicates that they are in fact owned by the Seller and not by the Buyer; and

(b) The Buyer shall not sell or dispose of any individual consignments of or delivery of the Goods save as agent for the Seller until the whole price therefore and all other sums due in terms of the contract have been received by the Seller and, in the event of any sale or disposal by the Buyer, the Buyer will ensure that these Conditions of Sale are expressly incorporated into the relative contract with the party buying or otherwise acquiring such of the Goods from the Buyer as aforesaid. The Buyer will hold the proceeds of such sale or disposal as agent for the Seller in a separate fund marked as being held for the sole benefit of the Seller and will not be entitled to intrude with such fund as its own.

(c) In the event that:-

- (i) on the expiry of any credit period the Seller shall not have received payment in full for the Goods or any part-delivery thereof, or
- (ii) a Receiver or Manager is appointed over the whole or any part of the assets of the Buyer, or
- (iii) a Resolution is passed or a petition is presented for the winding up of the Buyer, or
- (iv) the Buyer commits an act of bankruptcy or becomes not a bankrupt the Seller shall be entitled to require the Buyer at the Buyer's own expense to return immediately to the Seller such of the Goods as have not then been paid for in full and should the Buyer fail to do so the Seller is irrevocably authorised by the Buyer without notice to enter any premises occupied by the Buyer for the purpose of collecting and removing such of the Goods and the Buyer shall be responsible for (and shall, on demand, reimburse the Seller with) all the Seller's costs and expenses in connection with such collection and removal. Sub-Clauses (a), (b) and (c) of this Clause 10 shall each be construed and receive effect as a separate Clause of these Conditions of Sale.

11. TECHNICAL DATA

All information, details, measurements, descriptions and illustrations contained in the Seller's catalogues and sales manual, and all drawings, descriptive statements, weights, dimensions, power consumptions, price list and advertisements are intended to be and may be construed only as of a generally informative nature and no such information, details, measurements, descriptions and illustrations shall form any part of or be incorporated in any way into the contract.

12. INDUSTRIAL PROPERTY RIGHTS

- (i) The Seller shall indemnify the Buyer against any claim for infringement of industrial property rights arising directly from the use or sale by the Seller of the Goods, provided that any damages payable by the Seller shall exclude damages of a consequential nature and that the liability of the Seller shall be limited to payment of a reasonable royalty to the owner of such industrial property rights. This indemnity shall not apply to any infringement caused by the Seller having used or followed any design or instruction furnished or given by the Buyer or to any use of the Goods in any manner or for any purpose or in any country which shall have been specifically prohibited by the Seller or to any infringement which is due to use of the Goods within or in association or combination with any other equipment not supplied by the Seller.
- (ii) The Buyer shall give the Seller the earliest possible written or telexed notice of any claim being made or action threatened or brought against it in relation to alleged infringement of any industrial property rights and shall (if the Seller so requests) permit the Seller at the Seller's own expense to conduct any ensuing litigation and /or negotiations in relation to defence or settlement of such claim.
- (iii) Any design, specification or instruction furnished or given to the Seller by or on behalf of the Buyer shall not be such as may cause the Seller to infringe any industrial property rights vested in any third party.
- (iv) For the purposes of this Clause, "industrial property rights" shall mean patents, registered designs, registered trademarks and copyright.

13. SELLER'S LIABILITY FOR DEFECTS

- (A) Where any of the Goods supplied by the Seller to the Buyer are claimed by the Buyer to be defective in material or workmanship or not to conform to the specifications set out in the Buyer's order the Buyer shall notify the Seller of such defect within 10 days of receipt of the Goods and the Buyer shall give to the Seller a full opportunity to inspect and test such Goods. If the Seller agrees that such Goods were defective in either material or workmanship at the time of delivery to the Buyer the Seller shall either repair such Goods free of charge, replace such Goods (if such Goods shall have been paid for in full) or refund to the Buyer the price thereof, but in no circumstances whatsoever, subject to any statutory provision from time to time in force, shall the liability of the Seller in connection with any such Goods exceed the cost of replacement thereof or the price paid or agreed to be paid by the Buyer therefore. The liability of the Seller under this Clause is conditional upon the Buyer (i) adhering strictly to the terms of payment provided for in the contract, (ii) bringing the defect in the Goods to the attention of the Seller within the said period of 10 days and (iii) not attempting to repair or allowing anyone not previously approved by the Seller to repair any part or parts of the Goods. There shall be no liability on the Seller in terms of this Clause for any defects which in the opinion of the Seller occur as a result of:-
 - (i) misuse of the Goods or any of them or negligence on the part of any person other than the Seller;
 - (ii) loss or theft of the Goods or any part of them;
 - (iii) damage from any cause other than negligence by the Seller or the Seller's personnel; and
 - (iv) unauthorised modification, alteration or repair of any of the Goods.
- (B) Except as provided in Section 16 of The Unfair Contract Terms Act 1977 (liability for death or personal injury resulting from breach of duty) the Seller accepts no responsibility in any circumstances for any direct, indirect or consequential loss or damage, howsoever arising, which the Buyer may sustain in connection with any of the Goods supplied under the contract.
- (C) Save as otherwise provided by these Conditions of Sale all conditions and warranties express or implied, statutory or otherwise and, except as provided in Section 16 of The Unfair Contract Terms Act 1977 (liability for death or personal injury resulting from breach of duty), all other obligations and liabilities whatsoever of the Seller whether in contract or in delict or otherwise are hereby excluded.

14. SUSPENSION OR CANCELLATION OF DELIVERIES

If the Buyer shall fail to make payment to the Seller within 30 days of the due date of any sum payable under the Contract or shall be declared insolvent bankrupt or shall grant a Trust Deed (for or on behalf of his creditors or being a body corporate shall have a Receiver or a Provisional Liquidator or an Official Liquidator appointed to it or if any order shall be made or any resolution passed for winding up the Buyer then the Seller may without prejudice to its other rights either suspend or cancel further deliveries of the Goods and charge the Buyer in respect of any loss sustained thereby.

15. CANCELLATION BY THE BUYER

If at any time the Buyer cancels his order for the Goods or any part thereof the Seller shall be entitled to recover from the Buyer (a) all costs and expenses accrued and/or incurred to the Seller in connection with the manufacture or supply of such goods up to the date on which the Seller receives notice of such cancellation from the Buyer, and (b) all costs, charges, expenses and losses of whatever nature, including without prejudice to the foregoing generally, all direct, indirect and consequential losses incurred by the Seller as a result of such cancellation.

16. FORCE MAJEURE

The Seller shall not be responsible or liable in any manner whatsoever for any loss direct, indirect or consequential arising from any delay or default in the performance of any of the Seller's obligations in terms of the contract where such delay of default arises as a result of any circumstances or conditions beyond the control of the Seller including (but without prejudice to the generality of the foregoing) war, industrial dispute, strike, lockout, riot, malicious damage, fire, storm, flood, Act of God, accident, non-availability or shortage of material or labour failure by any sub-contractor or supplier to perform, failure of production equipment, any statute, rule, byelaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority.

If performance of the contract shall be delayed by any such circumstances or conditions beyond the control of the Seller, then the Seller shall have the right to suspend further performance of the contract until such time as the cause of the delay shall no longer be present.

If performance of the contract by the Seller shall be prevented by any such circumstances or conditions beyond the control of the Seller, then the Seller shall have the right to be discharged from further performance of and liability under the contract. If the Seller exercises such right the Buyer shall thereupon pay all sums due in terms of the contract less a reasonable allowance for such part of the contract as has not then been performed by the Seller.

17. RULING LAW

The contract and these Conditions of Sale shall be governed by and construed in all respects in accordance with the law of England.

18. SEPARATE AND SEVERABLE

Each Clause and Sub-Clause in these Conditions of Sale is separate and severable and enforceable accordingly.