

Hughes Electronics Ltd Terms and Conditions of Sale

1. DEFINITIONS

The "Company" means Hughes Electronics Limited.

The "Purchaser" means the person, firm or company to be supplied with the Goods by the Company.

The "Goods" means the products, services, materials and/or other items to be supplied pursuant to the Contract.

The "Contract" means the contract for sale and purchase of Goods and/or the supply of Services made between the Company and the Purchaser.

The "Conditions" means the terms, conditions, clauses and provisions herein which all shall apply to the Contract.

The "Purchaser Order" means the Purchasers request to the Company for Goods and/or Services upon acceptance of which by the Company Acknowledgement the Contract is established.

The "Company Acknowledgement" means the Company's written acceptance of the Purchaser Order in a form entitled 'Sales Order Acknowledgement' upon issuance of which the Contract is established.

A "Call off Order" means a Contract for the sale of Goods that are to be held in stock at the Company premises and called for by the Purchaser pursuant to pre-arranged delivery dates stated in the Purchaser Order and accepted by the Company Acknowledgement or on delivery dates notified by the Purchaser in writing to the Company subsequent to the Contract date and accepted by the Company.

The "Services" means the services described in the Contract.

2. SCOPE

These Conditions apply to all sales of Goods (including any Call off Order) and/or Services by the Company and shall prevail over any inconsistent terms or conditions referred to in the Purchaser Order, correspondence, oral agreement or elsewhere unless specifically agreed to in writing by the Company. Any conflicting conditions or stipulations are hereby excluded or extinguished.

3. QUOTATION

A quotation by the Company does not constitute an offer, and the Company reserves the right to withdraw or amend the same at any time prior to the Company's acceptance of the Purchaser Order.

4. PRICES

4.1 Unless the prices quoted are stated to be fixed, the prices payable for the Goods shall be those charged by the Company at the time of despatch, so that the Company shall have the right at any time to review any quoted prices, taking account of increases in costs including (without limitations) costs of raw materials or labour and any variations in exchange rates.

4.2 Quoted prices are "ex-works" and exclusive of value added tax and other duties, levy or tax assessed against the Goods by any government or other authority.

5. TERMS OF PAYMENT

5.1 Terms of payment are strictly net cash with order unless a credit account has been established with the Company. Where a credit account has been established subject to clause 5.5 below, payment of invoices shall, unless otherwise agreed in writing, be made in full without any deduction or set off within 30 days of the date of invoice of Goods and/or Services.

5.2 Any extension of credit allowance to the Purchaser may be changed or withdrawn at any time.

5.3 The Company shall have the right to charge on overdue accounts at the rate of 3.50% above the Barclays Bank PLC base rate from time to time, to run from the due date for payment thereof until receipt by the Company of the full amount whether or not after judgement.

5.4 If in the opinion of the Company the credit worthiness of the Purchaser shall have deteriorated prior to delivery the Company may require full or partial payment of the price prior to delivery or the provision of security for payment by the Purchaser in a form acceptable to the Company.

5.5 In any case where the Purchaser is resident outside the United Kingdom and unless otherwise agreed the price of the Goods shall be secured by an irrevocable letter of credit satisfactory to the Company, established by the Purchaser in favour of the Company and confirmed by a United Kingdom bank acceptable to the Company immediately upon the receipt of the Company Acknowledgement of the Purchaser Order. The letter of credit shall be for the Contract price inclusive of any tax or duty payable by the Purchaser and shall be valid for the period specified by the Company. The Company shall be entitled to payment on presentation to such United Kingdom Bank specified by the Company or as may be agreed to in writing by the Company from time to time.

5.6 If the Purchaser makes default in any payment on the due date (time being the essence) or is otherwise in breach of the Contract or if (being an individual) he commits an act of bankruptcy or enters into voluntary arrangement, or has a receiving order made against him or (being a company) enters into liquidation (whether compulsory or voluntary) or administration or voluntary arrangement or has a receiver or manager appointed to the whole or any part of its business or undertaking or if distress or executions are levied or threatened upon any of the Purchasers property then in any such case without prejudice to any other rights the Company may have;

a) The Company shall be entitled to repossess and resell the Goods delivered to the Purchaser and for that purpose to enter upon the property in which they are situated.

b) The Company shall be entitled either to suspend Goods in transit and all further deliveries to the Purchaser until the default is made good or to refuse to deliver any further Goods to the Purchaser and to resell any further Goods ordered by the Purchaser whether they are the balance of the Contract order, the whole of the order or a prior or further order and may forthwith determine the Contract without prejudice to the provisions hereof and to any other claims.

c) The Purchaser shall in any event be liable to make good to the Company any loss of profit on all such Goods and all costs and expenses of repossession, storage, insurance and sale and to pay to the Company interest as provided for in clause 5.3 herein until actual payment.

6. DELIVERY

6.1 Any time or date quoted by the Company for delivery is given and intended as an estimate only. Whilst every effort will be made to despatch Goods on time, no liability can be accepted by the Company for failure to deliver within the specified times in the Contract.

6.2 The Company shall not consider or accept any liability for shortages, damage, non-delivery or nonconformity of the Goods unless the Purchaser notifies the Company in writing within seven days of receipt of the Goods.

6.3 If for any reason the Purchaser fails or refuses to accept delivery of the Goods at the time such Goods are due and ready for delivery then the Company may sell or dispose of the Goods without prejudice to the Company's right of legal redress for loss suffered in consequence of the Purchaser's failure to accept delivery of such Goods.

6.4 The Company will allow 10 minutes waiting time from the carrier arrival time at the delivery address for unloading. The Company reserve the right to charge the Customer a waiting time fee in the event of any delays caused to unloading for any reason which shall for the avoidance of doubt include the first 10 minutes.

7. RETURN OF GOODS

7.1 Unspecified, damaged or nonconforming Goods may be returned by the Purchaser carriage pre-paid to arrive at the Company's premises within thirty days of the date of delivery provided and only if the following Conditions are met;

a) The Company are advised within 7 days from the date of delivery of any damages, discrepancy, or shortage.

b) The Goods are authorised for return by the Company.

c) The Goods are returned by the Purchaser within the 30 day period clearly labelled with a Company returns number which the Purchaser must obtain in writing from the Company prior to returning the Goods.

7.2 No Goods will be replaced or credits issued to the Purchaser unless the Goods are accompanied by a bona fide returns number. If the Company does not receive returned Goods within 30 days of issuing to the Purchaser a returns authorisation number the Purchaser will be deemed to have accepted the Goods and the returns authorisation number will become invalid. The Company will cancel the returns number and the Purchaser must then ensure prompt payment for Goods in accordance with the Contract.

8. TITLE

8.1 The Goods shall remain the sole and absolute property of the Company until such time as the Purchaser shall have paid to the Company the agreed price in full.

8.2 Until each payment the Purchaser shall be in possession of the Goods solely as bailee for the Company and in a fiduciary capacity and the Purchaser shall store the Goods in such a way as to enable them to be identified as the property of the Company.

8.3 The Company reserves the immediate right of re-possession of any Goods to which it has retained title as aforesaid and thereafter to re-sell the same and for this purpose the Purchaser hereby grants an irrevocable right and licence to the Company's employees and agents to enter upon all or any of its premises with or without vehicles during normal business hours. The right shall continue to subsist notwithstanding the termination of the Contract for any reason and is without prejudice to any accrued right of the Company hereunder or otherwise.

8.4 The Purchaser agrees immediately upon being so requested by the Company to assign to the Company all rights and claims which the Purchaser may have against its customers arising from sub-sales of Goods until payment is made in full as aforesaid.

9. CANCELLATION

In the event of cancellation of whole or part of any Contract the Company reserves the right without prejudice to charge up to 100% for Goods manufactured, ordered or stored by the Company pursuant to the Contract and up to 50% for the remaining balance or in respect of any Services to be provided. The Company may also impose a further charge for part cancellation of the Contract if the reduction in quantity affects the pricing structure.

10. CALL OFF ORDERS

10.1 If the Purchaser elects to notify the Company of delivery dates subsequent to the Contract date the Purchaser agrees in any event to accept delivery of at least 50% of the Goods within six months of the Contract date and 100% of the Goods within 12 months of the Contract date.

10.2 In the event that the Purchaser has failed to take delivery of 100% of the Goods within 12 months from the Contract date the Company shall have the right to charge the Purchaser for the full value of the Goods whether or not the Purchaser agrees to accept delivery of the Goods, such charges to become payable immediately upon receipt of an invoice from the Company. For the absence of doubt the date on the invoice will become the due date for payment of the Goods and the date from which the Company may charge overdue accounts charges pursuant to clause 5.3 of these Conditions.

10.3 The Company shall have the right to charge such storage fees as are applicable from time to time on all Goods which remain at the Company premises due to the failure of the Purchaser for whatever reason to take delivery of the Goods within 12 months from the Contract date.

11. SPECIFICATIONS BY THE PURCHASER

The Purchaser shall indemnify and keep indemnified the Company against all claims, cost, damages and expenses incurred by or for which the Company may become liable as a direct or indirect result of the carrying out of any work required to be done on or to the Goods and/or in the supply of any Services in accordance with the requirements or specifications of the Purchaser which involve any infringement or claim of infringement of any intellectual property right vested in another person, firm or company.

12. LICENCES AND CONSENTS

12.1 The Contract is conditional upon the obtaining of all and any licences or consents necessary for its performance in which connection the Purchaser shall sign all such forms and documents and render all such other assistance to the Company as may be necessary.

12.2 The Purchaser shall obtain at his own expense any licence or consent required for the sale of the Goods or the supply of the Services by the Company and if necessary or so required shall produce evidence of the same to the Company on demand.

13. FORCE MAJEURE

13.1 The Company shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser as a direct or indirect result of the supply of the Goods and/or Services by the Company being prevented, hindered or delayed by reason of any force majeure circumstances.

13.2 In this condition "Force Majeure Circumstances" shall mean any act of God, riot, strike, lock-out, trade dispute, or labour disturbances, accident breakdown of plant or machinery, fire, flood, difficulty in obtaining workmen, material or transport or other circumstances whatsoever outside the control of the Company affecting the provision of Goods or of raw materials by the Company's usual source of supply or the manufacture of the Goods by the Company's normal route or means of delivery.

14. WAIVER

The failure on the part of either party to the Contract to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement therefore at time or times thereafter.

15. NOTICES

Any notice required to be given hereunder in writing shall be deemed to have been duly given if by pre-paid first-class post, telex or telegraph addressed to the party concerned at its principal place of business or last known address.

16. HEADINGS

Headings to any of these Conditions are included to facilitate references only and shall not affect the construction thereof.

17. GOVERNING LAW

The Contract shall be governed by and construed and interpreted in accordance with the Laws of England and for the purposes of settlement of any disputes arising out of or in connection with the Contract the parties hereby submit themselves to the exclusive jurisdiction of the English Courts.

18. GENERAL

All Goods and/or Services are supplied subject to these Conditions which supersede any earlier sets of Conditions appearing in the Company's catalogues or elsewhere and which shall override any terms or Conditions stipulated, incorporated into any written material or referred to by the Purchaser whether in the Purchasers Order or in any negotiations. The relaxation or waiver by the Company of any of these Conditions on any occasion shall act merely as a waiver on that occasion and shall not affect the Company's right to enforce any of these Conditions on any subsequent occasion. Any variation of these Conditions must be confirmed in writing by the Company and will not otherwise be valid. No Purchaser Order shall be deemed to have been accepted by the Company unless it is accepted in writing and duly acknowledged by a Company Acknowledgement. Any description given by the Company of the Goods is given by way of identification only and the use of such description shall not constitute Contract by description.

19. SEVERABILITY

If any condition, term or other provision of this agreement is determined to be invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other Conditions and provisions of this agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

20. ERRORS

This agreement or any Contract to which it relates shall not be invalidated because of printing or clerical errors.