

## GENERAL TERMS AND CONDITIONS OF SALE

### 1 BASIS OF THE AGREEMENT

- 1.1 In these General Terms and Conditions of Sale (the "Conditions"), "Seller" means OMRON ELECTRONICS LTD of Opal Drive, Fox Milne, Milton Keynes, MK15 0DG and/or its affiliates; "Buyer" means the entity which accepts an offer of Seller for the sale of Goods or whose order for Goods is accepted by Seller; and "Goods" means any goods which Seller agrees in writing to supply to Buyer. References to sale shall be construed as references to supply; references to Goods as references to services; references to the quality of Goods as references to the quality of services; references to delivery of Goods as references to the performance of services; and references to repair and/or replace as references to correct and/or rework. Such references shall be logically amended where appropriate.
- 1.2 The Conditions are applicable to all offers, orders, confirmations, invoices and agreements by virtue of which Seller undertakes to supply Goods to Buyer. Any General Conditions and other terms of Buyer are hereby expressly excluded.
- 1.3 A contract under which Seller shall sell Goods to the Buyer ("the Agreement") shall only come into existence once an authorised representative of Seller has received and accepted the Buyer's order in writing and until acceptance Seller shall be under no obligation to the Buyer. The terms of the Agreement shall override and supersede any previous negotiations, agreements or arrangements between Seller and Buyer, unless otherwise agreed. A quotation issued by Seller shall only be valid for 30 days from its date.
- 1.4 The quantity, quality and description of and any specification for the Goods shall be those set out in Seller's quotation or acknowledgement of order.
- 1.5 Information contained in Seller's drawings, advertisements, catalogues and the like is issued for the sole purpose of giving an approximate idea of the goods described therein, without any responsibility or liability on the part of Seller. Any typographical, clerical or other such error or omission in any sales literature, price list, invoice or other document issued by Seller shall be subject to correction without any liability on the part of Seller.
- 1.6 Unless confirmed in writing by an authorised representative of Seller, any advice or recommendation given by Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods is followed or acted upon entirely at the Buyer's own risk, and accordingly Seller shall not be liable for any such advice or recommendation which is not so confirmed, provided always that this sub-paragraph will not exclude or restrict Seller's liability for fraudulent misrepresentation. In entering into the Agreement the Buyer acknowledges and confirms that it does not and will not in good faith rely on any such representations, which are not so confirmed.
- 1.7 The Buyer shall ensure that all Goods conform to the applicable Seller specification and will be free from defects in material and workmanship before using or incorporating them into any item.

### 2 PRICE AND PAYMENT

- 2.1 Prices are quoted in GBP, unless otherwise stated, place of delivery as designated in Section 3.1 below, and exclusive of any VAT, unless otherwise stated. Quotations are valid for 30 days from date of issue.
- 2.2 Seller may alter its quoted price both before and after acceptance of the Buyer's order and all Goods will be charged for at prices current at the date of despatch.
- 2.3 Buyer shall make full payment for the Goods as invoiced by Seller within 30 days from the end of the month of invoice. Time for payment shall be of the essence.
- 2.4 Seller shall have the right to invoice Buyer for a partial delivery of the Goods.
- 2.5 If full payment is not made on the due date, then interest shall be payable on the outstanding balance both before and after judgment at the rate of 2 percent each month above the Barclays Bank plc minimum lending rate from time to time in force compounded monthly until payment.
- 2.6 Buyer shall not be entitled to withhold payment of any invoice by reason of any right of set off or any claim or dispute with Seller, whether relating to the quality or performance of the Goods or otherwise.
- 2.7 In case of bankruptcy, suspension of payments or seizure on the part of Buyer, all amounts owed by Buyer to Seller shall become due and payable immediately and in full, and Seller shall be entitled to offset any claims immediately.
- 2.8 If Seller incurs exchange rate losses due to Buyer's failure to pay when payment is due, Seller shall be entitled to compensation by Buyer, equivalent to the amount of such losses.
- 2.9 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to Seller, Seller may:
  - 2.9.1 cancel the Agreement or suspend any further deliveries to the Buyer;
  - 2.9.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Seller) as Seller may think fit (notwithstanding any purported appropriation by the Buyer).
- 2.10 Without prejudice to any other right of Seller, Seller shall have the right to suspend performance or to terminate all or part of the Agreement if it reasonably believes that Buyer will not make payment, pursuant to the conditions hereunder.

### 3 DELIVERY

- 3.1 Unless otherwise agreed, delivery shall be by UK standard delivery terms to the Seller's manufacturing and/or selling facility or other address designated by Seller.
- 3.2 Unless otherwise confirmed in writing by Seller, dates and times given for completion of delivery of Goods or of any stage or process are given as estimates only and shall not constitute a term or condition of any contract between Seller and the Buyer. Time shall not be of the essence. While Seller will use all reasonable endeavours to meet any estimate, it does not undertake to meet any such estimate and it reserves the right to amend any estimate at any time.
- 3.3 Seller will deliver the Goods in such batches or instalments, as it considers expedient. Neither failure by Seller to deliver one or more batch or instalment, nor over or under delivery shall entitle Buyer to reject these Goods or subsequent deliveries, claim compensation or terminate the Agreement and Buyer shall pay for such Goods at the pro rata contract rate. Seller's liability will be set out as at 3.7(e) below.
- 3.4 If for any reason Buyer does not accept delivery of the Goods when they are ready for delivery, or Seller is unable to deliver the Goods on time because Buyer has not provided appropriate instructions, documents, licences or authorisations, then (i) risk in the Goods will pass to Buyer (including for loss or damage); (ii) the Goods will be deemed to have been delivered; and (iii) Seller may store the Goods until delivery, whereupon Buyer will be liable for all related costs and expenses.

- 3.5 Seller will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor will any delay entitle Buyer to terminate or rescind the Agreement unless such delay exceeds 180 days.
- 3.6 The method of delivery shall be as quoted by Seller, but if this is not stated, then the Goods shall be delivered in accordance with subparagraph 3.7(b).
- 3.7
  - a) If the buyer agrees to collect or arrange for the collection of the Goods from any of the Seller's premises, delivery shall be effected and risk but not title will pass when the Goods are handed to the Buyer or its carrier at the Premises. Seller will notify the Buyer when the Goods are ready for collection and the Buyer shall collect the Goods within three working days of such notice.
  - b) If Seller agrees to deliver the Goods to a place within the United Kingdom or Republic of Ireland nominated by the Buyer, Seller shall engage a carrier for this purpose and shall notify the Buyer of expected dates and times for despatch and delivery. Seller does not represent or warrant that the expected date or time of delivery will be met. Delivery shall be effected and risk but not title shall pass when delivery is tendered at the nominated place during normal working hours.
  - c) The Buyer shall promptly notify the Seller if Goods to be delivered in accordance with sub-paragraph (b) do not arrive within fourteen days of receipt of Seller's invoice relating to them.
  - d) The Buyer shall carefully examine Goods delivered in accordance with sub-paragraph (b) on receipt and notify the Seller within seven working days in writing, details of any short delivery or defects reasonably discoverable on careful examination.
  - e) Seller shall replace, or at its option, refund the purchase price of any defective, short delivered or undelivered Goods falling within sub-paragraphs c) and d) but shall not be under any other liability to the Buyer in relation to the non-delivery, short delivery or defects. If the Seller does not receive the notices referred to in sub-paragraphs c) and d) it shall be discharged from all liability (whether arising in negligence or otherwise) arising from such non-delivery, short delivery or defects.
  - f) The Buyer shall not return any Goods to the Seller unless the Seller has first issued it with a returns authorisation number.

#### 4 | **PROPERTY AND RISKS**

- 4.1 Seller shall retain all property in and absolute ownership over the Goods and its right of disposal of the Goods until Buyer has paid in full all sums owed to Seller by Buyer (including VAT) in respect of all Goods on any account under any transaction between Seller and the Buyer concluded at any time. Until such payment is received by Seller, Buyer holds the Goods as the Seller's fiduciary agent and bailee and Seller may at any time request the return of any or all of the Goods which are in the possession, custody or control of the Buyer.
- 4.2 The risk in the Goods will pass to the Buyer in accordance with paragraph 3 of the Agreement irrespective of property in the Goods remaining with Seller
- 4.3 The Buyer shall keep and store the Goods separately so as to enable them to be identified as the Seller's property. In particular the Buyer shall record the serial number of, and the invoice number relating to each of the Goods.
- 4.4 The Buyer shall keep the Goods in good condition and at its own cost fully insure them on Seller's behalf for an amount not less than the price. The Buyer shall hold the proceeds of this insurance on trust for the Seller.
- 4.5 The Buyer shall immediately notify the Seller if it, or its directors intend to present a petition for the making of an administration order or winding up order or if it is aware of any such intention on the part of any of its creditors.
- 4.6 The Buyer's authority to possess or sell the Goods shall forthwith terminate without the need for any notice to the Buyer upon the occurrence of any of the events referred to in sub-paragraph 9.1 whether Seller exercises its right to terminate the Agreement under 9.1 or not.
- 4.7 Seller may repossess the Goods at any time after the termination of the Buyer's authority to possess or sell the Goods under clause 4.6 above or Seller's termination of the Agreement under clause 9.1 below and prior to receipt by the Seller of payment in full of all sums owed by the Buyer to Seller (including VAT) in respect of all Goods on all accounts under all transactions between Seller and the Buyer concluded at any time. For this purpose the Buyer grants the Seller an irrevocable licence to enter the Buyer's premises or any other premises in the occupation or control of the Buyer where the Goods are or are believed by the Seller to be located and remove the Goods. Even before the authority referred to in clause 4.6 has terminated, representatives of the Seller may at any time enter such premises to inspect the Goods.

#### 5 **WARRANTY**

- 5.1 Seller warrants, subject to the conditions set out below, that the Goods, at the time of delivery, will be free from defects in materials and workmanship for a period of 12 months therefrom.
- 5.2 Any claim by Buyer based on any defect in the quality or condition of the Goods shall be notified to 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 manifestation of the defect or failure but no later than 12 months after delivery.
- 5.3 Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by Buyer, nor shall this warranty apply in respect of any defect arising from fair wear and tear, wilful damage, negligence, alteration or repair of the Goods without Seller's approval, failure to follow Seller's instructions (whether oral or in writing), and/or failure to store, install, maintain and use the Goods in the proper environment with reasonable care.
- 5.4 It is Buyer's responsibility to evaluate the accuracy, completeness, reliability and usefulness of any recommendations, advice or other information provided by Seller in connection with the suitability of any of the Goods for specific applications or otherwise. Such information shall not be interpreted or relied upon as professional advice, or as advice on specific facts or matters. Accordingly, Seller cannot and does not assume any responsibility or liability whatsoever for any use or misuse of such information.
- 5.5 Where any valid claim in respect of the Goods, based on any defect in the material or workmanship thereof, is notified to Seller in accordance with the Conditions, Seller shall in its discretion, repair or replace the Goods. If none of the foregoing remedies are commercially viable as of Seller's sole judgement, Seller may opt instead to refund to Buyer the price of the Goods non-conforming with the foregoing warranty. The foregoing are Buyer's exclusive remedies for breach of the foregoing warranty and Seller's sole liability in the event of such breach. Any defective goods or parts thereof shall, on repair or replacement, remain or become Seller's property and shall be immediately returned to Seller by Buyer.
- 5.6 Except as to the express warranties contained herein, Seller makes no conditions, warranties or representations, express or implied, in fact or in law, including but not limited to, any implied warranties of satisfactory quality, merchantability, fitness for a particular purpose, title and non-infringement, all of which are expressly excluded to the fullest extent permissible by law.

- 5.7 Software provided by Seller is provided "as is" and Seller makes no conditions, warranties or representations of any kind with regard to the software, including without limitation, any implied warranties of satisfactory quality, merchantability, fitness for a particular purpose, title and non-infringement, all of which are, to the extent permissible by law, hereby expressly excluded. Seller does not warrant results of use or that the software is bug free or that its use will be uninterrupted. The software is not warranted to be free from errors, nor is there any warranty of interoperability or compatibility with any other equipment or software.
- 5.8 If Seller provides software or hardware from third parties, none of the warranties contained herein shall apply. The conditions and warranties of these third parties will exclusively apply to such software or hardware and Seller is only obliged to provide information on these conditions or warranties when requested to do so by Buyer.
- 5.9 Seller shall be under no liability under the above warranties (or any other guarantee or condition) if the total price for the Goods has not been paid within 60 days of the due date for payment.
- 5.10 Shall the foregoing limitations/disclaimers be determined invalid by any competent court or governmental authority, Buyer agrees that its remedy shall be limited to the purchase price of the Goods failing to conform to the warranty in this Section.

## **6 PROPRIETARY RIGHTS**

- 6.1 All copyright, patent, trade secret and other proprietary and intellectual property rights in the Goods, their packaging and all information which Seller may provide to Buyer or its agents or employees shall at all times remain vested in Seller, and Buyer shall not acquire any intellectual property rights or licence relating to the Goods and may not copy or imitate the Goods.
- 6.2 Buyer shall both during and after completion of the Agreement maintain the Goods and any confidential information of Seller ("Confidential Information") in confidence and shall not make it available or accessible, in any manner, to any third party without Seller's prior written consent. The internal dissemination of Confidential Information by Buyer shall be restricted to those employees or directors of Buyer (the "Buyer's Staff") who have a need to know the Confidential Information for the proper performance of Buyer's obligations under the Agreement and who agree in writing to be bound by, and comply with the provision hereof. Buyer acknowledges that any breach of this provision by Buyer's Staff will be construed as a breach of Buyer.
- 6.3 Buyer warrants compliance with the relevant privacy legislation with regard to the personal data disclosed by Buyer to Seller. Likewise, Buyer expressly acknowledges and warrants that it has informed and obtained the unequivocal consent of each of the data subjects for transferring their data to Seller. Further, Buyer shall indemnify, defend and hold Seller, its affiliates and customers harmless from and against any and all claims, actions, suits, liability, loss, fees, fines, damages and costs which Seller may hereafter incur, suffer or be required to pay for damage arising out of or in connection with any infringement by Buyer of its obligations under the relevant privacy legislation or any inaccuracy with the foregoing representations.

## **7 ASSIGNMENT**

- 7.1 Buyer shall not be entitled to assign the Agreement or any part thereof without Seller's prior written consent.
- 7.2 Seller may assign the Agreement or any part thereof to its affiliates.

## **8 LIMITATION OF LIABILITY**

- 8.1 Seller shall not be liable to Buyer or be deemed to be in breach of the Agreement due to any cause beyond Seller's reasonable control, whether it could have been foreseen or not. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Seller's reasonable control: Act of God, explosion, flood, tempest, fire, extreme weather conditions, or accident; war or similar circumstance, threat of war, terrorism, insurrection, civil disturbance or requisition; acts, restrictions, regulations, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority whether formally constituted or exercising de facto power or authority; import or export regulations or embargoes; strikes, lock-outs, boycotts, or other industrial action or trade disputes (whether involving employees of Seller or of a third party); difficulties in obtaining raw materials, labour, fuel; and power failure or breakdown in machinery.
- 8.2 To the fullest extent permitted by law and without affecting Seller's liability at law for personal injury or death and notwithstanding anything contained in the Conditions, Seller's total liability whatsoever, in contract, tort (including negligence or breach of statutory duty), or howsoever otherwise arising in connection with direct damage in the performance or contemplated performance of the Agreement for each respective breach or series of related breaches, shall not exceed in the aggregate the price actually paid by Buyer to Seller for the Goods under the Agreement.
- 8.3 In no event shall Seller be liable to Buyer for any special, indirect or consequential loss or damage (whether for loss of profit, loss of business, loss of anticipated savings, depletion of goodwill, recall, dismantling or otherwise), costs, expenses or other claims for consequential compensation, including without limitation punitive or exemplary damages, howsoever caused which arise out of or in connection with the sale of the Goods, even if Seller has been advised of the possibility of such damages.
- 8.4 Should any exclusion/limitation of liability not be valid in any jurisdiction, the exclusion/limitation shall be deemed to be replaced by such valid exclusion/limitation, which most closely matches the intent and purpose of the original exclusion.
- 8.5 The Buyer acknowledges that Seller's prices for the Goods have been determined on the basis that the exclusions of, and limitations on, Seller's liability set out in the Conditions are effective and enforceable. The Buyer further acknowledges that it has read the Conditions, is fully aware of and agrees to those exclusions and limitations, and is able to and will obtain insurance coverage for itself in the light of those exclusions and limitations if it deems it appropriate. The Buyer acknowledges that the said exclusions and limitations are reasonable and represent the agreed commercial allocation of risks between the Buyer and Seller. The Buyer also acknowledges that it had the option of seeking to negotiate a change to the said exclusions and limitations by paying a higher price for the Goods to compensate Seller for the additional risk assumed and/or associated insurance costs.

## 9 TERMINATION OF THE AGREEMENT

- 9.1 Seller shall have the right to terminate the Agreement immediately, without affecting Seller's accrued rights and without further liability if:
  - 9.1.1 the Buyer defaults in the payment on its due date of any sum under or pursuant to any transaction under the Conditions or commits any continuing or serious breach of the Agreement and fails to remedy such breach (if remediable) within ten days notice to do so; or
  - 9.1.2 any of the following events occur:-
    - 9.1.2.1 distress or execution is levied against any of the Buyer's assets and is not paid or discharged within seven days; or a judgment against the Buyer remains unsatisfied for more than seven days; or a receiver is appointed with respect to any of the Buyer's assets; or
    - 9.1.2.2 a petition is presented for the winding up of or for an administration order to be made in relation to the Buyer; or a resolution passed for the Buyer's winding up (other than a members' voluntary winding up for the purposes of amalgamation or reconstruction on terms approved in writing by Seller); or
    - 9.1.2.3 the Buyer suspends or threatens to suspend payment of its debts or is deemed unable to pay its debts for the purposes of section 123 Insolvency Act 1986; or ceases or threatens to cease to carry on its business or any material part as a going concern; or as a result of any change in the powers, business or circumstances of the Buyer it is unlikely to be in a position to fulfil the Agreement or any transaction pursuant to it; or
    - 9.1.2.4 any event in a foreign jurisdiction analogous to, or comparable with 9.1.2.1 to 9.1.2.3 above; or
  - 9.1.3 at any time Seller has reasonable grounds to believe that any of the events mentioned in 9.1.1 and 9.1.2 above is likely to happen within a period of three months thereafter.
- 9.2 On termination of the Agreement for any reason:
  - 9.2.1 Seller shall be discharged from any further liability to perform under the Agreement;
  - 9.2.2 the Buyer shall pay Seller on demand for all work performed by Seller for the Buyer prior to termination and all sums owed by the Buyer to Seller (including VAT) in respect of all Goods on all accounts under all transactions between Seller and the Buyer concluded at any time; and
  - 9.2.3 Seller is granted an irrevocable licence to enter the Buyer's premises to recover any Goods or other materials which are Seller's property.

## 10 GENERAL

- 10.1 Each right or remedy of Seller under the Agreement is without prejudice to any other right or remedy of Seller whether under the Agreement or not. Failure or delay by Seller to exercise any of its rights shall not be a waiver or forfeiture of such rights.
- 10.2 Notices shall be given in writing and sent to a party's address by facsimile or registered post and by airmail where appropriate. Each party shall promptly notify the other in writing any change of address or facsimile numbers.
- 10.3 It is Buyer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by governmental and other authorities or corporations relating to the possession, use, import, export or resale of the Goods.
- 10.4 Buyer represents and warrants that it shall take any necessary measures and follow Seller's instructions, as provided from time to time, in order to monitor the safety of the Goods sold. For such purposes, Buyer shall keep the necessary documents for tracing the Goods sold, a register of complaints about the Goods sold, and, on Seller's request, take any necessary steps to be able to effectively warn customers about post-sale safety risks or to implement an effective withdrawal or recall of the Goods.
- 10.5 If any provision of the Conditions is held invalid or unenforceable, by a competent authority, in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected.
- 10.6 The construction of the Conditions is not to be affected by any heading. Any variation to the Conditions shall only be binding if it is recorded in a document signed by a director of Seller.

## 11 APPLICABLE LAW

- 11.1 The Agreement shall in all respects be governed by English law. The parties submit to the exclusive jurisdiction of the English courts.