

Conditions of Sale of Goods

1. Definitions

In these Conditions the following expressions shall have the following meanings:

- (a) the "Company" means Switchtec Electronics Limited;
- (b) the "Customer" means the person firm or corporation with whom the Company contracts for the sale of the Goods upon the terms of these Conditions;
- (c) the "Goods" means the products which are to be sold by the Company and purchased by the Customer pursuant to the Contract;
- (d) the "Contract" means the contract for the sale of the Goods by the Company to the Customer incorporating these Conditions arising from the Company's acceptance of the Customer's order;
- (e) "Working Day" means any day of the week except a day which is a Saturday, a Sunday or a bank, public or statutory holiday.

2. General

- 2.1 Any quotation or estimate given by the company is an invitation to the Customer to place an order and thereby make an offer open to acceptance by the Company and no order placed in response to or any other acceptance of a quotation or estimate shall give rise to a contract binding upon the Company.
 - 2.2 These Conditions are the only conditions upon which the Company transacts business and shall be incorporated in the Contract to the exclusion of all other terms and conditions including any terms or conditions specified or referred to in any order placed by the Customer. Any reference in any document forming part of or evidencing the Contract (including any order design drawing specification or other similar document) to any terms or conditions of purchase or business of the Customer shall not have effect of incorporating any such terms or conditions in the Contract.
 - 2.3 No variation of these Conditions shall have effect unless it is agreed to by the Company in a document signed by a director of the Company issued to the Customer.
 - 2.4 If the Goods are sold on any trade term which is defined in the current edition of "Incoterms" published by the International Chamber of Commerce the use of that trade term shall have the meaning and effect set out in Incoterms and shall impose on the Company and the Customer as seller and buyer respectively the obligations therein stated subject only to any provision of these Conditions to the contrary.
- ## 3. Prices
- 3.1 All prices are ex works and are exclusive of Value Added Tax which when payable will be charged at the rate applicable.
 - 3.2 Prices stated in quotations estimates acceptances of orders or other documents issued by the Company prior to despatch of the Goods are not binding upon the Company and the price charged shall be the price ruling at the date of despatch of the Goods unless the price so stated was also stated to be fixed and the Customer has complied in all respects

with the terms and conditions specified by the Company subject to which the price was stated to be fixed.

- 3.3 In the case of Goods to be delivered to a destination in the United Kingdom the price excludes carriage to that destination. In the case of Goods to be delivered to a destination outside the United Kingdom the price is F.O.B. English port.

4. Passing of Risk

- 4.1 The Goods shall be at the risk of the Customer:
 - (a) if they are delivered to the Customer's own premises by the Company's own transport from the time at which they are unloaded from such transport;
 - (b) in any other case from the time they are loaded on the vehicle on which they are to leave the Company's premises en route to the Customer whether such vehicle is the Customer's or a third party's vehicle.

5. Inspection

The Customer shall inspect the Goods immediately upon their arrival at the destination to which they are to be delivered pursuant to the Contract for the purpose of ascertaining:

- 5.1 that the number of items and packages and the quantities are as specified and the Goods are as described in the Company's Delivery Note;
 - 5.2 whether the Goods have been damaged in transit;
 - 5.3 that the Goods are those specified in the Customer's order stated on the Company's Delivery Note.
- Any discrepancy between the Goods delivered and those described in the Company's written advice of delivery or specified in the Customer's order and any damage to the Goods in transit must be notified to the Company in writing within three working days of the Customer's receipt of the Goods. In the case of non-delivery of the Goods, the Customer must notify the Company in writing within ten working days of the receipt by the Customer of the Company's written advice of delivery. Without prejudice to the provisions of Condition 4 no claim in respect of non-delivery or damage in transit will be entertained by the Company unless the provisions of this Condition are complied with by the Customer.

6. Cancellation of Orders

The Customer shall not be entitled to cancel an order which has been accepted by the Company so as to bring into existence the Contract except upon terms which re-imburse the Company for its loss of profit and all costs charges and expenses (including costs of tooling and purchase of raw materials) incurred by the Company in respect of the Contract up to the date of receipt by the Company of written notification of cancellation from the Customer.

7. Payment

- 7.1 Payment for the Goods shall be made not later than sixty days from the end of the month in which the Goods were despatched from the Company's premises unless the Company has agreed in writing with the Customer to extend additional credit to the Customer.

- 7.2 If the Customer fails to comply with its payment obligations the Company may withhold despatch of any part of the Goods remaining to be despatched, suspend manufacture of any part of the Goods remaining to be manufactured, suspend its performance of any other contract between it and the Customer or require the Customer to pay for Goods prior to their despatch from the Company's premises.

- 7.3 All amounts due from the Customer in payment for the Goods which are not paid on or before their due date for payment shall bear interest at the rate of 4% per annum above Royal Bank of Scotland Bank Plc's base lending rate or 10% per annum whichever is the higher from the due date of payment until they are paid.

- 7.4 The Customer shall not be entitled to set off against sums due to the Company under the Contract any amount claimed by the Customer from the Company whether under the Contract or some other contract between them or on any other account.

8. Title to the Goods

- 8.1 Title to and property in the Goods shall remain vested in the Company (notwithstanding their delivery and the passing of the risk therein to the Customer) until

- (a) the price of the Goods; and
- (b) all other money to be paid by the Customer to the Company on any other account or pursuant to any other contract has been paid discharged or satisfied in full.

- 8.2 Until the title to and property in the Goods pass to the Customer the following provisions shall apply:

- (a) The Company may at any time without prior notice to the Customer repossess and resell the Goods if any of the events specified in Condition 15 occurs or if any sum due from the Customer to the Company under the Contract or on any other account or pursuant to any other contract is not paid on the due date for payment. For the purpose of exercising its rights under this sub-paragraph the Company, its employees or agents together with any vehicles considered by the Company to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon and access to the Customer's premises and/or other locations where any of the Goods are situated;
- (b) The Customer shall store the Goods in a proper manner in conditions which adequately protect and preserve them without charge to the Company and ensure that they are clearly identified as belonging to the Company. The Company shall be entitled to examine the Goods in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so and to enter upon any premises owned or occupied or access to which is controlled by the Customer for that purpose;
- (c) The Company shall be entitled to maintain an action against the Customer for the price of the goods notwithstanding that the title to and property in the Goods has not passed to the Customer;

(d) The rights and remedies conferred upon the Company by this Condition 8 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract.

9. Performance of the Contract

- 9.1 Dates or periods for despatch or delivery of the Goods fixed by the Contract are approximate and time shall not be of the essence thereof. If having used its reasonable endeavours to comply with any date or dates specified in the Contract for the despatch or delivery of the Goods to the Customer the Company is unable to do so such failure shall not constitute a breach of contract by the Company entitling the Customer to terminate the Contract and/or to claim damages against the Company but the Company shall be entitled to a reasonable extension of time in which to effect despatch or delivery. If the Company fails to comply with any date or dates fixed by the Contract for despatch or delivery of the Goods the Customer may at any time after such date or dates have passed by not less than 28 days notice in writing to the Company specifying a new date or dates make time of the essence thereof.
- 9.2 If the Company is delayed in or prevented from performing the Contract or any part thereof by circumstances beyond its control such as industrial disputes, fire, severe weather conditions, decisions or actions of any government or other authority, shortages of materials, power or machinery breakdown or failure, war, threat of war, interruption or reduction in communications or means of transport or failure by the Customer to give adequate or any instructions when requested to do so by the Company to enable the Company to fulfil its obligations under the Contract then the Company may suspend further performance of the Contract for so long as it is so delayed or prevented and such suspension shall not constitute a breach of the Contract on the part of the Company. The Company shall notify the Customer in writing of any such suspension of performance of the Contract and if such suspension continues for more than 13 weeks either the Company or the Customer may by notice in writing to the other terminate the Contract but without prejudice to the Company's right to be paid in accordance with the Contract for any part of the Goods which have been despatched to the Customer prior to the suspension of performance by the Company and to be reimbursed all other costs, charges and expenses incurred by the Company pursuant to the Contract up to the date of such notice of termination where it is given by the Company or up to the date of receipt thereof by the Company where it is given by the Customer. If such termination is by reason of the Customer's failure to give adequate or any instructions such reimbursement shall include the Company's loss of profit.
- 9.3 If the Company agrees the Customer may collect the Goods in which case the Customer shall collect them within 3 days of being notified that they are ready for collection failing which the Company may despatch the Goods at

Conditions of Sale of Goods

the Customer's risk and expense or store them in which event the Customer shall pay the Company's reasonable storage charges and the Goods shall be stored at the Customer's risk. If the Customer requests the Company to delay despatch of the Goods and the Company agrees to do so the Customer shall pay the Company's reasonable storage charges and the Goods shall be stored at the Customer's risk as from the date upon which the Goods are ready for despatch. For the purposes of payment pursuant to Condition 7 Goods stored by the Company pursuant to this Condition 9.3 shall be treated as having been despatched by the Company and the Customer shall pay for them accordingly.

10. Acceptance of Goods by the Customer

Without prejudice to the provisions of Conditions 5 and 11 and subject to Condition 14 the Customer shall be deemed to have accepted the Goods as being free from any defect in materials or workmanship and as complying with any designs drawings specifications or other data supplied by the Customer and otherwise conforming with the Contract unless within 5 working days of receipt of the Goods the Customer notifies the Company in writing of any such defect or any such failure to comply or conform which would be apparent upon such inspection and testing of the Goods as it is reasonable for the Customer to undertake within 5 working days of such receipt.

11. Guarantee

11.1 If the Customer establishes to the reasonable satisfaction of the Company that:

- (a) there is a defect in the materials or workmanship of the Goods; or
- (b) there is a defect in the design of the Goods; or
- (c) there is some other failure on the part of the Company in relation to the Goods to conform with the Contract; then the Company shall at its option either:
 - (d) replace the Goods with goods which in all respects are in accordance with the Contract; or
 - (e) repair or make good such defect or failure free of charge (including all costs of transportation of the Goods to and from the parties for that purpose) to the Customer; or
 - (f) agree with the Customer that the Customer will retain the Goods in the condition in which they are in consideration of a reduction in their price to compensate the Customer for the defect or failure;

subject in every case to the remaining provisions of this Condition.

11.2 Paragraph 11.1 of this Condition ("the Guarantee") shall not apply:

- (a) unless the Customer notifies the Company in writing of the alleged defect or failure immediately upon its first becoming aware thereof and in any event within 12 months of the date upon which the risk in the Goods passed to the Customer under the provisions of Condition 4; and

- (b) unless the Customer as soon as reasonably practicable after first becoming aware of the alleged defect or failure returns the Goods where it is practicable to do so to the Company, carriage paid, for inspection examination and testing and in any other case permits the Company to have access to the Goods at the Customer's premises or other location where they may be for such purposes.

11.3 If the Company elects to replace the Goods it shall at its own expense deliver the replacement goods to the Customer at the address at which the defective goods were located and the title to the defective goods shall (if it has vested in the Customer) re-vest in the Company and the Customer shall make any such arrangements as may be necessary for the purpose of delivering up the defective goods to the Company. If the Company elects to repair or make good the Goods and such work is to be carried out at the Customer's premises the Customer shall permit the Company to have such access to the Goods on such premises as the Company may require for that purpose.

11.4 The Guarantee is in substitution for any other legal remedy of the Customer in respect of the alleged defect or failure and the liability of the Company shall in all such cases and for all such purposes be limited to the obligations imposed by the Guarantee. Any other condition warranty representation or undertaking on the part of the Company as to the quality of the Goods or their fitness or suitability for any purpose however and whenever expressed or which may be implied by statute custom of the trade or otherwise is hereby excluded and the provisions of Sections 13 to 15 inclusive of the Sale of Goods Act 1979 shall not apply to the Contract except where the Customer deals as consumer within Section 12 of the Unfair Contract Terms Act 1977. Except as and to the extent provided by the Guarantee the Company shall not be liable to the Customer in contract, tort or for breach of statutory duty for any loss or damage direct, indirect or consequential (including economic loss of any kind) which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company its employees or agents.

11.5 Nothing contained in this Condition 11 shall operate so as:

- (a) to exclude the liability of the Company for death or personal injury resulting in the negligence of the Company its employees or agents;
- (b) to exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979;
- (c) to impose on the Company any liability in respect of any representation suggestion or comment with regard to the Goods made by the Company its employees or agents in the course of any negotiations between the Company and the Customer leading to the making of the Contract unless in the case of any such representation the Company has expressly agreed in writing that it shall be a term of the Contract.

11.6 If at the request of the Customer a certificate of conformity is provided the issue thereof shall not operate to confer upon the Customer any rights or remedies against the Company in respect of the Goods which the Customer would not have had in the absence of any such certificate.

12. Tooling

All tooling acquired by the Company for the purpose of manufacturing the Goods will remain the property of the Company to the entire exclusion of any interest therein of the Customer notwithstanding that the Company charges the Customer the whole or a proportion of the costs thereof.

13. Sub-contracting

The Company shall be entitled to sub-contract the manufacture of the Goods in whole or in part.

14. Testing Inspection prior to delivery

If the Contract provides for testing or inspection of the Goods by or on behalf of the Customer prior to delivery whether at the Company's premises or elsewhere, then upon the Company giving notice of the availability of the Goods for testing and/or inspection the Customer shall inspect and/or test the Goods within 7 days of such notice. If the Customer fails to do so or if within 14 days of the Customer having done so the Customer does not notify the Company that the Goods are not in accordance with the Contract specifying the matters complained of, then the Customer shall be conclusively deemed to have accepted that the goods are in accordance with the Contract and shall not thereafter be entitled to reject the Goods or to claim damages or compensation from the Company on the grounds of anything which such testing and/or inspection revealed or would have revealed if it had been carried out.

15. Breach of Contract by or Insolvency of the Customer

If any of the following events occurs or in the opinion of the Company is reasonably likely to occur:

- 15.1 the Customer commits any breach of the Contract; or
- 15.2 any distress or execution is levied upon any of the goods or property of the Customer and is not paid out within 7 days; or
- 15.3 the Customer (or where the Customer is a partnership any partner thereof) appears to be unable to pay his debts within Section 26F of the Insolvency Act 1986 or makes any voluntary arrangement within Section 253 of the said Act or presents his own or has presented against him a bankruptcy petition; or
- 15.4 the Customer (being a limited company) is deemed to be unable to pay its debts within Section 123 of the Insolvency Act 1986 or makes any voluntary arrangement within Section 1 of the said Act or has an administrative receiver or a receiver and manager appointed of the whole or any part of its undertaking property or assets or has a petition presented an order made or a resolution passed for the winding up of the Customer or for the appointment of an administrator thereof the Company

may without prejudice to any other rights or remedies it may have against the Customer forthwith suspend further performance of the Contract or by notice in writing to the Customer prejudice to any other rights or remedies it may have against the Customer forthwith suspend further performance of the Contract or by notice in writing to the Customer terminate the Contract as it thinks fit. Notwithstanding any such suspension or termination, the Customer shall pay the Company in accordance with the Contract for all Goods despatched by the Company prior thereto and shall indemnify the Company against any loss liability or expense incurred by the Company in connection with the Contract including (without prejudice to the generality of the foregoing) loss of profit, liabilities and expenses in connection with raw materials and tooling obtained or produced for the purposes of the Contract and the cost of labour and overhead expenses reasonably attributable to the Contract.

16. Waiver

The rights and remedies of the Company in respect of any failure by the Customer to observe or comply with the terms thereof shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company not by any failure of or delay by the Company in asserting or exercising any such rights or remedies.

17. Law and Jurisdiction

The Contract shall be governed by and construed in all respects in accordance with English Law and the Company and the Customer submit themselves to the exclusive jurisdiction of the English Courts.

18. Headings

The headings to these Conditions are inserted for ease of reference and shall not affect their construction.

19. Notices

Any notice authorised or required to be given pursuant to these Conditions shall be in writing and shall in the case of a notice to the Company be sent to it at its registered office and shall in the case of a notice to the Customer be sent to the Customer at its registered office if the Customer is a Company and in any other case to the address of the Customer last known to the Company. Any such notice may be given by post of facsimile transmission. To prove service in the case of a notice given by post it shall be sufficient to show that the notice was despatched by first class recorded delivery service or registered mail in a correctly addressed and adequately stamped envelope and to prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was despatched to the correct telephone number. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission. The provisions for recorded delivery post and the time service is effected will need to be adjusted if the Conditions are to be used for any significant export business.