



ULTRA ELECTRONICS ELECTRICS

Terms and Conditions of Purchase (Version 8)

1 DEFINITION

'Contract' shall mean any contract resulting from this order.

'Order' shall mean the purchase order.

'Purchaser' shall mean Ultra Electronics - Electrics.

'Supplier' shall mean the person on whom this order is placed.

'Goods' shall mean the supplies to be delivered under the Contract and shall be deemed to include any service(s).

2 APPLICATION

The following terms and conditions shall apply in respect of the Order and the Contract and any attempted alteration or qualification by the Supplier of those terms and conditions and any other term and condition. Purchaser will not be bound by and specifically objects to any of Supplier's terms or conditions, which are different from or in addition to the provisions of the Order and Contract.

Entry into performance of the Contract by the Supplier shall constitute conclusive evidence of the Supplier's acceptance of the following terms and conditions.

3 PRICES

Unless otherwise specifically stated in the Order and subject to clause 12 below all prices shall be fixed and firm and shall not be varied. Unless otherwise agreed the prices shall include delivery and packing.

4 DELIVERY

4.1 The Supplier shall complete and deliver the Goods at the time or times specified in the Order and in this respect time shall be of the essence.

4.2 If all or any Goods are not delivered or completed by the time or times specified in the Order then the Purchaser shall be entitled to determine the Contract in respect of such Goods and/or in respect of any Goods already delivered or completed under the Contract. On such determination the Purchaser shall be entitled:

(a) To return to the Supplier at the Supplier's risk and expense any of the goods already delivered and to recover from the Supplier any money paid by the Purchaser in respect of such Goods and in respect of any work or services already completed.

(b) To recover from the Supplier any consequential loss including (but not limited to) any additional expenditure incurred by the Purchaser in obtaining other goods, work or services in replacement of those in respect of which the Contract has been determined.

4.3 The Purchaser may at any time or times by notice in writing to the Supplier postpone the date/s for delivery without thereby incurring any liability and the Supplier shall deliver such Goods on the date/s so notified and shall not make any claim for adjustment in price or otherwise in respect of any such postponement.

4.4 Items purchased with a shelf life must have at least 80% of their life remaining when supplied to UEE, unless otherwise agreed.

5 ACCEPTANCE AND REJECTION

Notwithstanding any law to the contrary the Purchaser shall be entitled to reject Goods which are the subject of a Contract despite the fact that the Purchaser has accepted other Goods which are the subject of that Contract.

6 GOODS NOT REQUIRED

- 6.1 Should the Purchaser decide at any time or times that it no longer requires all or part of any undelivered Goods the Purchaser shall be entitled to terminate the Contract with respect to the Goods which are not required by serving on the Supplier written notice to that effect.
- 6.2 The expression 'termination notice' means a notice so served and the expression 'terminated Goods' means the Goods which are not required.
- 6.3 Upon receipt of a termination notice the Supplier shall forthwith: (except as may otherwise be directed by the Purchaser)
- (a) Stop work on the terminated Goods and ensure that no further steps are taken to produce the terminated Goods.
 - (b) Endeavour to realise salvage on the terminated Goods.
- 6.4 The Purchaser shall incur no liability whatsoever to the Supplier in respect of any such termination and shall not be liable to the Supplier for any loss or damage whatsoever resulting from any such termination except that the Purchaser shall within a reasonable time after being requested to do so and receiving full details supporting the Supplier's claim pay to the Supplier a reasonable amount for work carried out by the Supplier on the terminated Goods prior to receipt of the termination notice and the price paid or payable by the Supplier for material and parts which prior to such receipt were properly purchased by and delivered to the Supplier for the purpose of being incorporated in the terminated Goods (such reasonable amount being calculated after deducting the value of all salvage realised or reasonably capable of realisation in relation to the terminated Goods).
- 6.5 No such termination shall affect or alter the Contract with respect to any Goods or materials, which are not the subject of the termination.

7 RISK

Unless otherwise agreed, including any agreement to the contrary incorporated by reference to INCOTERMS, the risk in the Goods shall remain with the Supplier until delivery to the place specified in the Order.

8 PRODUCT LIABILITY & INSURANCE

- 8.1 The Supplier undertakes to indemnify the Purchaser against all claims, proceedings, damage, loss, expenditure, costs and liability which may be made or brought against the Purchaser or which the Purchaser may sustain or incur under the provision of the Consumer Protection Act 1987 or otherwise in respect of or in relation to or in connection with the Goods whether or not the Goods have been incorporated into other equipment or goods.
- 8.2 The Supplier shall at all times during the continuance of the Contract and thereafter maintain product liability insurance in an amount of not less than the £1,000,000-00 (One Million Pounds Sterling) or its equivalent in terms satisfactory to the Purchaser and shall from time to time at the request of the Purchaser furnish to the Purchaser a copy of the policy and evidence of payment of the premium therefore.

9 PACKING

All goods shall be delivered suitably packaged to the destination specified on the face of the Order. The Supplier shall not charge the Purchaser for pallets, containers or packaging and the Purchaser shall not be responsible for storage or return of such items.

10 ADVICE NOTES

- 10.1 Where the point of delivery is other than the Purchaser's factory a complete copy of all despatch documents shall be sent to Purchaser on the day of despatch. If UK import duty is chargeable on any Goods, Supplier shall notify Purchaser in sufficient time for Customs arrangements to be made such that import of items required for re-export may be made duty free.
- 10.2 Packing lists, release notes and Certificate of Conformity shall accompany delivery of the Goods where appropriate and except for packing lists separate documents must be included for each Order number with each consignment of Goods, stating clearly the description, weight, serial, part, drawing, specification and Order numbers, together with the issue numbers applicable to the manufacturing standard of the Goods, (the specification referred to being the technical requirements as stated in the Order).

11 INVOICES

- 11.1 Invoices must state clearly the Order number and Order line item number, applicable serial, part, drawing, release note numbers, descriptions, quantities and weights, VAT and Suppliers registration number. Subject to the Supplier complying with its obligations under the Contract, payments of invoices shall be made 90 days after the last day of the month of delivery.
- 11.2 The Supplier shall render its invoice within 6 months of the date of delivery of the relevant Goods. The Supplier releases the Purchaser from any obligation to pay an invoice which is issued more than 6 months after the date of delivery of the Goods.

12 VARIATIONS

- 12.1 The Purchaser shall have the right to vary the Contract at any time or times by notice in writing to the Supplier (including any variations in design and/or specification). If such variation involves an increase or decrease in the total quantity of Goods ordered or in the work to be performed by the Supplier or in cost or acceleration in the time for delivery or performance a fair and reasonable adjustment shall be made to the to the Contract price and/or the time/s or performance and the Supplier shall provide all necessary facilities and information to assist the Purchaser in agreeing such adjustment/s. If the Supplier wishes to make any claim for adjustment under this paragraph he shall deliver the same in writing to the Purchaser within 14 days after the date on which the notice is received or such claim shall be deemed waived. Supplier shall support all costs claimed as a result of variations of the Contract with detailed and accurate records which Purchaser shall have the right to audit.
- 12.2 No variations or amendment proposed by the Supplier shall be binding upon the Purchaser unless agreed by the Purchaser and confirmed by the Purchaser in writing by an officially authorised amendment to the original Contract.

13 STATUTORY REQUIREMENTS

The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other relevant legislation (including without limitation those relating to the notification of precautions to be observed in relation to Goods and their handling and operation and storage). The Supplier shall ensure that full details of all such precautions shall accompany each consignment of Goods and that the Purchaser is notified of all restrictions and/or limitations as to the shelf life of Goods forthwith after the Contract comes into effect.

14 REJECTION AND DEFECTS

- 14.1 The Purchaser shall have the right to reject the Goods, or any of them, at any time or times upon or following delivery if the Goods or any of them are in respect defective or not in conformity with the requirements and warranty set out in Clause 25 or otherwise not in conformity with the Order or the Contract. Goods rejected will be removed by the Supplier forthwith at the Supplier's expense and the Supplier will forthwith refund to the Purchaser the price therefore if paid.
- 14.2 If within 36 months after delivery or within 24 months after being put into service (whichever period shall last expire) any of the goods or parts thereof are found to be in any respect defective as to design, materials or workmanship or to be in any respect not in conformity with the requirements and warranty set out in Clause 25 or otherwise not in conformity with the Order of the Contract the Supplier shall upon notification by the Purchaser to that effect forthwith at the cost of the Supplier remedy such defects or non-conformity or at the option of the Purchaser replace such Goods or parts and deliver and refit the replacements as directed by the Purchaser. The foregoing provisions of this sub-clause 14.2 shall apply to the Goods or parts remedied and to the replacements until the expiry of 24 months from the date on which the remedial work is completed or (in the case of replacement) until the expiry of 24 months from the date of delivery of the replacements.
- 14.3 The Supplier shall pay to the Purchaser the amount of all loss, damage, cost and expense which the Purchaser may sustain or incur and shall indemnify the Purchaser against all claims and proceedings and liability which may be brought against or incurred by the Purchaser, as a result of the supply of any defective or non-conforming Goods or parts.

15 INTELLECTUAL PROPERTY RIGHTS

All inventions, designs, methods, processes, data and software discovered or generated as a result or in the course of the Contract and all intellectual property rights therein and in anything produced in the course of the Contract shall belong to the Purchaser and the Supplier assigns and agrees to assign the same to the Purchaser.

16 INDEMNITY

If any Goods, apparatus, devices or processes supplied under the Contract or used in connection therewith or anything done in relation thereto shall infringe or be alleged to infringe any patent, registered design trade mark, copyright or other intellectual property right the Supplier shall indemnify the Purchaser against all claims, damages, expenditure and liability which the Purchaser may sustain or incur by reason of or in connection with such infringement or alleged infringement.

17 SUB-CONTRACTING AND ASSIGNMENT

No Goods shall be sub-contracted by the Supplier without the prior written consent of the Purchaser. The Supplier shall upon request of the Purchaser supply copies of all purchase orders placed upon the sub-contractor in those cases where permission has been granted to the sub-contract. None of the Supplier's rights or obligations under the Contract shall be assigned to a third party without the prior written consent of the Purchaser. Sub-contracting by the Supplier shall in no way affect or derogate from the Purchase rights or Supplier's obligations under the Contract.

18 FREE ISSUE MATERIAL, ARTICLES ON LOAN

- 18.1 Where Goods are manufactured from material supplied by Purchaser, unless agreed otherwise replacements for any spoiled or lost material shall be ordered from Purchaser at Supplier's liability and expense. If the Supplier for whatever reason scraps material or components supplied free

issue by Purchaser the Supplier shall be responsible for all costs previously insured by Purchaser including but not limited to material cost and added value.

- 18.2 Any articles or documentation loaned to Supplier by Purchaser in connection with the Contract will remain at all times the property of Purchaser and be surrendered to Purchaser upon demand in good serviceable condition, and are to be used solely in connection with the Contract. Such loaned articles shall be at the risk of the Supplier and incurred by the Supplier at Supplier's expense against loss or damage. Where the Contract price includes the cost of making or purchasing tooling and/or inspection equipment, these become the property of Purchaser on completion of the Contract or earlier termination and shall be held in safe custody properly identified and maintained until disposal instructions are issued by Purchaser and shall only be used by Supplier in connection with the Contract and other contracts from Purchaser. Supplier shall provide copies of drawings of such articles to Purchaser on request and at no extra charge.

19 TERMINATION

- 19.1 Should the Supplier be in default of any of its obligations under the Contract the Purchaser shall, without prejudice to any other right which it may have under the Contract or at law including the right to recover damages, have the right to terminate the Contract in whole or in part and to procure elsewhere replacements for the Goods in respect of which the Contract has been terminated and the Supplier shall pay to the Purchaser the amount if any by which the cost of procuring these replacements exceeds the price which would have been payable to the Supplier for these Goods under the Contract.
- 19.2 In the event that Purchaser elects to procure elsewhere replacements in accordance with this clause Supplier shall promptly provide Purchaser with all information which may reasonably be required to facilitate such change of Supplier as well as delivering to Purchaser immediately upon request any materials, dies, tools, drawings etc, the property of Purchaser whether produced under the Order or free issued.

20 LIQUIDATION OR BANKRUPTCY

Should the Supplier (being an individual) commit any act of bankruptcy or if a receiving order shall be made against him, or if Supplier (being a company) shall enter into an arrangement or composition with its creditors or have a receiver or manager appointed or go into liquidation whether voluntary or otherwise (except for the purpose of amalgamation or reconstruction which in the opinion of the Purchaser is not detrimental to the Purchaser), or should Purchaser consider that Supplier is insolvent, then the Purchaser may forthwith terminate the Contract and Purchaser shall have no liability to Supplier other than payment for completed Goods delivered to and accepted by Purchaser prior to date of termination. Any free issued material, tools, components etc, shall be returned immediately to Purchaser.

21 ACCESS

Purchaser, Customer and Regulatory Authorities and their nominees reserve the right to inspect progress of work under the Contract during normal business hours and Supplier shall grant and procure access for these purposes. The Order or Contract may be in support of a governmental programme and rights of access to Supplier's premises and records under DEFCON 608, AQAP2110 Section 9.1, DEFCON 643, DEFCON 648 and DEFCON 651 shall apply.

22 CONFIDENTIALITY

The Order and the Contract and the subject matter thereof and any samples supplied by the Purchaser and all information supplied by the Purchaser and relating in any way to the purchaser's business, processes, research or property, shall be treated as and kept confidential by the Supplier and the Supplier shall not disclose any of them or any details concerning them for any purpose whatsoever (including advertisements, display or publication) without the Purchaser's prior consent in writing, nor shall the Supplier use any of them except for the purpose of performing the Contract.

23 PUBLICITY

The Supplier shall free of charge give such publicity to the award of the Order and participate in such publicity activities relating thereto as the Purchaser shall reasonably require.

24 DELIVERIES MADE

24.1 If the Supplier delivers quantities in excess of the quantity due the Purchaser shall have the right to accept at a reduced price or reject the quantity in excess of that due.

24.2 If the Supplier delivers a lesser quantity than that due the Purchaser shall have the right to pay only for the quantity delivered and to accept the same in lieu of the proper quantity and the Supplier shall upon request deliver the outstanding quantity to the Purchaser free of charge.

24.3 The Purchaser shall not be obliged to accept delivery of any Goods prior to the delivery date and if the Purchaser shall do so:

- (a) the Purchaser shall be entitled to charge storage to the Supplier and
- (b) the date for payment shall be calculated according to the due delivery date.

25 QUANTITY, QUALITY AND DESCRIPTION OF GOODS

The Goods shall conform as regards quantity, quality and description with all the requirements of the Order and the Contract and shall be of sound materials, workmanship and design. If samples or patterns or specifications shall have been provided or given the Goods shall also conform to them. The Purchaser relies upon the skill and judgement of the Supplier and the Supplier warrants that the Goods shall be fit for the purpose and capable of the performance required by the Purchaser.

26 QUALITY CONTROL

The Supplier shall supply Goods against this Order which fully comply with the Quality Assurance Requirements for Suppliers QAP 1901.

27 OBSOLESCENCE

Without prejudice to any other rights or remedies of Purchaser under the Contract or otherwise, Supplier undertakes at his expense to ensure the maintainability of any Goods to be supplied under this Contract which may become obsolete at any time during the Contract and for a period of 24 months after delivery. Supplier's obligations in this respect shall be fulfilled either by re-design of the Goods or by a contribution of 2 years' worth of spares as part of an all time buy of spares for the Goods.

28 LIQUIDATED DAMAGES

If any of the Goods are not delivered (and, where applicable, installed to the satisfaction of Purchaser) within the time or times specified in the delivery schedule of the Order, Supplier shall be liable to pay to Purchaser liquidated damages in relation to the Goods in respect of each complete calendar month which delay occurs the following sum for such delay:

- (a) a sum amounting to 5% of the agreed price for each Good(s) for each completed calendar month of such failure in delivery up to maximum of 6 completed calendar months.
- (b) the sum shall be calculated on a pro-rata daily basis for periods other than whole months, commencing from the thirty first day after the date specified for delivery.

The agreement under this Condition shall be irrevocable in the absence of agreement in writing between Supplier and Purchaser to vary the provision,

The said sum(s) represent(s) a reasonable pre-estimate of the loss or damage likely to be sustained by Purchaser in the event of such failure in delivery.

The provisions of this Condition are, as stated, without prejudice to any other rights of Purchaser under the Contract. Accordingly, liquidated damages shall be payable hereunder in respect of any material period during which the Contract subsists, notwithstanding its ultimate determination.

No payment or concession to Supplier by Purchaser or other act or omission of Purchaser shall in any way affect the rights of Purchaser to recover the said Liquidated Damages or be deemed to be a waiver of the right of Purchaser to recover such damages unless a waiver has been expressly stated in writing by Purchaser.

29 OTHER RIGHTS AND OBLIGATION

The rights and remedies of the Purchaser and the obligations of the Supplier expressed herein are additional to, and are not in substitution of or derogation from, any other rights or remedies available to the Purchaser or any other obligations of the Supplier under statute or common or other law or custom.

30 APPLICABLE LAW

The construction, interpretation, validity and performance of the Order and the Contract and these Terms and Conditions shall be governed by the laws of England, and any dispute arising between the parties shall be litigated in the English civil courts. The Supplier submits to the exclusive jurisdiction of the English civil courts.