

**ULTRA ELECTRONICS PRECISION AIR & LAND SYSTEMS - CHELTENHAM**

**DEFINITIONS**

"Quotation" means the Supplier's Quotation to the Purchaser.

"Order" means the order placed by the Purchaser.

"Purchaser" means the person placing the Order.

"Supplier" means ULTRA ELECTRONICS PRECISION AIR & LAND SYSTEMS - CHELTENHAM, which is a business name of Ultra Electronics Limited.

"Contract" means any contract resulting from an Order.

"Goods" means the goods which are the subject of a Contract.

"INCOTERMS® 2010" means 2010 Edition ICC publication No 715E and "Ex-Works" means "Ex-Works" as per INCOTERMS® 2010

If a Contract is not Ex-Works but is of another type described in Incoterms (such as CIF) the provisions of Incoterms in relation to that type of contract shall apply as modified (if at all) by the terms of the Contract.

**1. APPLICATION**

The placing of an Order shall be deemed to constitute acceptance of the following Terms and Conditions and they shall apply in respect of the Quotation and the Contract. Any attempted alteration or qualification by the Purchaser of those terms and conditions and any other term or condition which the Purchaser seeks to impose will be inoperative and inapplicable.

**2. QUOTATION AND ORDER**

A Quotation shall be deemed to be notification of a willingness to treat and shall not constitute an offer. An order shall be deemed to be an offer by the Purchaser.

**3. CONTRACT PRICE**

Is that stated in the Quotation unless subsequently modified in writing by the Sales or Commercial Manager or a Director or other duly authorised officer of the Supplier but subject to the following:-

- (a) all prices are subject to variation to the extent of any effect upon cost of producing the Goods or carrying out the Contract work due to variation after Quotation date, or after Order date if there was no Quotation, in labour costs or prices or cost of materials or goods or services;
- (b) cost of any special and/or extra testing required by Purchaser or any Government, Aerospace, Factory or other relevant Authority to be additional;

- (c) cost of our occasioned by any modification, or by any variation in specification or design required by Purchaser, or caused by or due to rectification of errors in drawings, specifications or schedules provided by Purchaser, or faulty material or unsuitable, worn or incomplete tooling supplied by Purchaser to be additional;
- (d) cost occasioned by any variation of rates of production or of quantities required by Purchaser to be additional;

Unless otherwise stated all prices quoted are exclusive of Value Added Tax (if any).

**4. DRAWINGS**

Descriptions and illustrations contained in sales literature and price lists are approximate only and the Purchaser shall have no remedy or claim against the Supplier by reason of the fact that Goods do not conform with them in all respects. No drawings, specifications, documents and other information supplied or issued (whether before or after the formation of the Contract) to the Purchaser or for the use or information of the Purchaser shall be copied or reproduced by the Purchaser or communicated by the Purchaser to any third party, or used otherwise than in connection with the Goods, without the Supplier's express consent in writing and the Purchaser shall keep in confidence all those supplied to the Purchaser.

**5. DELIVERY**

- (a) Any reasonable postponement of performance or of delivery of any of the Goods caused by delay in procuring materials, production or transport which is not avoidable without expenditure or other measures which it would be abnormal for Supplier to make or undertake shall neither be actionable nor excuse non-acceptance of the Goods when tendered. In no circumstances shall Supplier be liable for any damage or loss resulting from late delivery of any Goods howsoever caused.
- (b) The Supplier will endeavour to deliver the total quantity of goods ordered by the Purchaser at the time specified in the contract. Nevertheless, the Supplier shall be entitled to make deliveries of a lesser quantity and an invoice for such lesser quantity shall be paid by the Purchaser and shall be subject to the provisions of clause 12(i) and (ii) hereof.

**6. CARRIER AND PACKING**

Unless otherwise specified, the Contract is Ex-Works. The Purchaser is responsible for nominating the carrier and any charges associated with delivery, customs clearances, duties etc and packing cases will be chargeable in addition.

**7. STORAGE**

If the carrier has not taken delivery of the goods within twenty one (21) days after they are ready, the Supplier may without further references to the Purchaser arrange for storage of the Goods. The storage and insurance charges arising in connection therewith shall be paid by the Purchaser.

**8. PASSING OF PROPERTY**

- (i) Until the Supplier has been paid in full for Goods, and subject to the Purchaser's right of disposal under (ii) below:-
  - (a) such Goods remain the property of the Supplier, (but this shall not affect the passing of the risk to the Purchaser)
  - (b) the Supplier may at any time or times recover and/or resell all or any such Goods for which payment is overdue in whole or in part; and for that purpose the Supplier and/or its servants and agents may enter upon any land or building where such Goods are
  - (c) the purchaser as bailee of such Goods for the Supplier will store the same for the Supplier in a proper manner without charge to the Supplier and shall clearly mark them as being the property of the Supplier.
- (ii) The Purchaser has the right to dispose of such Goods in the course of its business for the account of the Supplier and to pass good title to such Goods to its customer being a bona fide purchaser for value.
- (iii) In the event of such disposal the Purchaser has the fiduciary duty to the Supplier to account to the Supplier for the proceeds but may retain therefrom any excess of such proceeds over the amount outstanding under the Contract.

**9. TRANSIT**

The Purchaser shall notify the Supplier of any damage to or loss of Goods in transit within three (3) days of receipt and of any non-delivery of any consignment within ten (10) days of receipt of advice note.

**10. SUPPLIER'S LIABILITY**

All conditions and warranties whatsoever implied by statute, law or custom on the part of the Supplier or in relation to Goods (including, but not limited to, any condition or warranty as to enjoyment of quiet possession, correspondence with description,

merchantable quality, fitness for purpose, correspondence with sample and freedom from defect) are hereby expressly excluded.

The Supplier shall incur no liability whatsoever (including without prejudice to the generality of the foregoing any liability in tort) for any injury, loss, damage, or liability suffered or sustained by Purchaser or Purchaser's property, or by any other party or by any other party's property, in the course or as a result of any use, handling, application, supply delivery resale or disposition of any Goods, however the same may have been caused and notwithstanding that the same may have been due to any act, omission, negligence or default of the Supplier or its supplier/s or sub contractor/s or agent/s or any employee or agent of the Supplier or any such person and Purchaser hereby waives to the Supplier all rights in respect thereof.

Any representation or warranty made otherwise than in writing signed by the Sales or Commercial Manager or a Director or other duly authorised officer of the Supplier is negated and is expressly agreed to form no part of any Contract nor any inducement to the making of it.

## **11. PAYMENT**

- (i)** All accounts are strictly net and are payable in full not later than the thirtieth day following the date of the invoice. If the Supplier shall arrange for storage of any Goods under Condition 8 above the Supplier shall have the right to present its invoice for payment at any time thereafter and payment shall become due thereon as provided above. Should the Purchaser fail to make any payment when due to the Supplier (whether under the Contract or any other contract) the Supplier shall have the right by notice in writing forthwith to suspend all further manufacture and/or deliveries until the default be made good or at the Supplier's absolute discretion to determine the Contract in relation to Goods which remain to be delivered and without prejudice to any other rights or remedies which may be available to the Supplier.
- (ii)** Where due payment of the price or any part thereof is not made the Supplier, without prejudice to its other rights, shall be entitled to charge interest on the outstanding amount at the rate of 2.5% per month from due date of payment until payment.
- (iii)** If the Purchaser shall cancel the contract or purport to amend the contract reducing the quantity of goods ordered then, without prejudice to its other rights, the Supplier shall have the right to present its invoice for the full price and payment shall be due thereon as if delivery had been made on the date of cancellation or purported amendment.

**12. INVENTIONS**

Unless otherwise specifically stated in the Contract all inventions, designs or processes evolved or produced during or as a result of work carried out under the Contract shall be the sole property of the Supplier and the Purchaser hereby assigns and agrees to assign to the Supplier all future copyright and intellectual property rights therein and in all drawings, data and documentation so evolved or produced.

**13. INFRINGEMENT**

If Goods produced or work carried out in accordance with the Purchaser's specifications or instructions infringe or are alleged to infringe any patent, registered design, trade mark, copyright or other intellectual property right the Purchaser shall indemnify the Supplier against all claims, damages, loss, costs, expenses and liability which may be made against the Supplier or which the Supplier may sustain or incur by reason of or in connection with such infringement or alleged infringement.

**14. FORCE MAJEURE**

The Supplier shall incur no liability for any failure to perform or for any delay in performing the Contract or any part thereof caused in whole or in part by act of God, embargo, governmental act, fire, accident, war, riot, inclement weather, strikes, lockouts, trade disputes or labour troubles, breakdown of plant or machinery, inability to obtain adequate labour, materials or manufacturing facilities or any other cause, whether of a similar nature or not, beyond the control of the Supplier and the time for performance and/or delivery and/or despatch shall, if the Supplier so requires, be extended by a reasonable period if any such occurrence, inability or cause shall take place or arise.

**15. RIGHTS**

The rights and remedies 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 Supplier under statute or common law or otherwise.

**16. LAW**

The Contract shall be governed by and construed in all respects in accordance with English Law and the Purchaser hereby irrevocably accepts the exclusive jurisdiction of the English Civil Courts in so far as any disputes arising under or in connection with the Contract are concerned. The Uniform Law on the International Sale of Goods shall not apply.