

CONDITIONS OF SALE

These conditions apply to each contract ("Contract") relating to the sale of goods ("Goods") by Advanced Power Components plc (registered number 1635609) ("Seller"), to the exclusion of all other terms and conditions, including any terms or conditions which any buyer ("Buyer") purports to apply under any purchase order, confirmation of order, specification or other document. Any variation to these conditions and any representations about any Goods shall have no effect unless expressly agreed in writing and signed by a director of the Seller.

1. Quotation and Acceptance

- (a) Quotations are valid for thirty (30) days and create no obligation until the Seller accepts the Buyer's order. All orders or contracts must be approved and accepted by the Seller.
- (b) The Buyer's order must be in writing and contain sufficient information to enable the Seller to fulfil the order if accepted.

2. Price and Delivery

- (a) Unless otherwise agreed by the Seller in writing, the price for the Goods shall be the price set out in the Seller's price list published on the date of delivery or deemed delivery.
- (b) Time for payment shall be of the essence.
- (c) Prices do not include VAT or any other taxes applicable to the sale of Goods.
- (d) Unless otherwise stated delivery is ex-works (as defined in INCOTERMS). Carriage will be arranged on the request and at the expense of the Buyer. In the absence of specific agreement with the Buyer regarding the method of delivery, the Seller may in its sole discretion select the method of delivery of the Goods.
- (e) The Seller reserves the right to make deliveries of Goods in instalments and each Contract shall be severable as to each such instalment. Delay in delivery or other default of any instalment shall not relieve the Buyer of its obligation to accept and pay for the remaining deliveries.
- (f) In the case of scheduled orders, the Seller reserves the right to deliver to the Buyer up to ten per cent more or less than the quantity scheduled for that particular delivery, such variation to be taken into account in future scheduled deliveries under that order. In the case of one-off orders for customised Goods, the Seller reserves the right to deliver up to five per cent more or less than the quantity ordered. In both cases the Buyer will be liable to pay for the quantity actually delivered at the agreed unit price.
- (g) The delivery period quoted will commence from the Seller's acceptance of the Buyer's order. While the Seller will take reasonable steps to deliver the Goods within the delivery period, the Seller accepts no responsibility for any failure to do so.
- (h) If the Buyer refuses or fails to take delivery of Goods the Seller shall be entitled to immediate payment in full for such Goods. The Seller shall be entitled to store at the risk of the Buyer any Goods of which the Buyer refuses or fails to take delivery and the Buyer shall in addition to the purchase price pay all costs of such storage and any additional cost or carriage incurred as a result of such refusal or failure.
- (i) The Seller shall not be liable for any shortage or defect in Goods delivered unless notice thereof shall have been given to the Seller in writing within 30 days of the date of delivery. If the Buyer fails to notify the Seller within the said period the Buyer will be deemed to have accepted the shipment in question.
- (j) Unless otherwise agreed by the seller in writing, changes the scheduled delivery dates will not be permitted.

3. Termination and Cancellation

- (a) If, in the judgement of the Seller, the financial condition of the Buyer at any time does not justify continuation of production or shipment on the terms of payment originally specified, the Seller may suspend delivery and require full or partial payment in advance.
- (b) Each shipment made by the Seller shall be considered an independent transaction and payment shall be made accordingly. In the event that any work covered by the Buyer's order is delayed by the Buyer, the Seller shall be immediately entitled to payment of a percentage of the total purchase price equal to the percentage of the work actually done by the Seller.
- (c) The Seller may immediately terminate any Contract if the Buyer commits a material breach of any term of such Contract or if any of the matters referred to in clause 4(d) occur. In the event of any such termination the Seller shall be entitled to a cancellation charge in accordance with clause 3(d).
- (d) Cancellation in whole or part of any Contract or delivery will not be permitted without the prior written consent of a director of the Seller. In such cases the Buyer agrees to reimburse the Seller for any non-returnable material work in progress, stocking/restocking charges and other costs or liabilities suffered or incurred by the Seller as a result of the cancellation.

4. Title and Risk

- (a) Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of: (i) the Goods; and (ii) all other sums which are or which become due to the Buyer from the Buyer for any reason.
- (b) Until ownership of the Goods has passed to the Buyer, the Buyer shall: (i) hold the Goods on a fiduciary basis as the Buyer's bailee; (ii) store the Goods (at no cost to the Buyer) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Buyer's property; (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and (iv) maintain the Goods in satisfactory condition and keep them insured on the Buyer's behalf for their full price against all risks to the reasonable satisfaction of the Buyer. On request the Buyer shall produce the policy of insurance to the Buyer.
- (c) The Buyer may resell the Goods before ownership has passed to it solely on the following conditions: (i) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and (ii) any such sale shall be a sale of the Buyer's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- (d) The Buyer's right to possession of the Goods shall terminate immediately if the Buyer becomes bankrupt or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or ceases to trade, or convenes a meeting of creditors, or enters into liquidation (except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation), or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or if the Buyer encumbers or in any way charges any of the Goods.
- (e) The Buyer shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Buyer.
- (f) Risk passes to the Buyer when each shipment is collected, whether by the Buyer or a carrier, from the Seller's premises.
- (g) Where carriage has been arranged or where delivery is other than ex-works the Buyer shall immediately notify the Seller and the carrier of any loss or damage in transit.

5. Payment

- (a) All accounts are payable on demand from the Seller without any deduction or set-off and in any case not later than 30 days after the date of invoice regardless of the goods acceptance procedure used by the Buyer. The Seller reserves the right to charge interest at 1% per month on any sum still outstanding after the due date for payment. Payment shall not be withheld in respect of any financial claims made by the Buyer and not accepted by the Seller.

- (b) The Seller reserves the right to suspend deliveries without notice where payment is not received.
- (c) No cash or other discount will be allowed.

6. Descriptions

- (a) The quantity and description of Goods shall be as set out in the Seller's quotation or acknowledgement of order. All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the contract and Goods are not sold by sample.
- (b) Subject to clause 7(e), while the Seller makes every effort to ensure the accuracy of technical data or literature relating to the goods, the Seller will not be liable for any loss or damage of any nature arising from any errors or omissions in such technical data.

7. Warranty and Limitation of Liability – PLEASE READ CAREFULLY

- (a) The Seller warrants that Goods will at the time of shipment be free from material defects in material and workmanship under normal use and service and will conform to the Seller's applicable standard written specifications or, if appropriate, to any written specifications agreed in writing by the Seller. The Seller's sole obligation hereunder, and the Buyer's sole remedy, shall be limited to, at the Seller's option, either crediting the Buyer with the purchase price of, or replacing, Goods provided that: (i) written notice of non-conformance hereunder is received by the seller within 90 days after shipment of such Goods; and (ii) after the Seller's written authorisation has been obtained, such Goods are returned to the Seller's shipping location, freight charges pre-paid; and (iii) after examination such Goods are disclosed to the Seller's reasonable satisfaction to be non-conforming. Any such replacement shall not extend the period within which such warranty can be asserted. This warranty shall not apply to Goods which the Seller determines have, whether by the Buyer or any other person, been subjected to operating and/or environmental conditions in excess of the maximum values thereof in the application specifications or otherwise have been subject to misuse, neglect, improper installation, repair, alteration or damage. This warranty may be asserted by the Buyer only and not by the Buyer's customers or users of the Buyer's Goods. Where the Seller has manufactured goods to a design of the Buyer no liability is accepted by the Seller for design errors, which remain the responsibility of the Buyer. Subject to clause 7(e), in the case of Goods not manufactured by the Seller, the Seller's liability shall in no circumstances extend beyond the liability to the Seller of the manufacturer of such Goods.
- (b) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded in relation to the sale of Goods by the Seller or any Contract.
- (c) Subject to clause 7(e), the Seller shall have no liability in relation to the Goods or any Contract, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, for any indirect or consequential loss, damage, costs or expenses of any nature or for any third party claims, loss of profits, business, contacts, revenues, anticipated savings, or loss of or corruption to data.
- (d) Subject to clause 7(e), the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with any Goods or any Contract shall be limited to the price paid for such Goods or under the relevant Contract.
- (e) Nothing in these conditions excludes or limits the Seller's liability for death or personal injury caused by negligence, or for fraud, or under section 2(3), Consumer Protection Act 1987.

8. Force Majeure

- The Seller shall have no liability in respect of any failure or delay in performing any obligation under any Contract which is due to causes beyond its reasonable control, including but not limited to acts of God, fire, flood, war and civil disturbance or riot, acts of Government, currency restriction, labour disputes, unavailability of materials, or failure of supplier or sub-contractor to deliver on time.

9. Intellectual Property Rights

- (a) The Seller gives no warranty that the use of the Goods by the Buyer or any third party will not constitute an infringement of third party intellectual property rights.
- (b) Nothing in these conditions shall be construed as transferring or permitting the transfer of any intellectual property rights in the Goods to the Buyer.
- (c) The Buyer shall indemnify the Seller and its suppliers against all losses, damages, costs and expenses arising from any claim that any Goods made according to designs or specifications provided by the Buyer, or any goods produced or distributed by the Buyer containing or incorporating the Goods, infringe the intellectual property rights of a third party.

10. Treatment of Waste Electrical and Electronic Equipment within the EU Countries.

- To the maximum extent permissible in law, as between the Seller and the Buyer, the Buyer will take full responsibility and will fulfil all obligations for taking back and/or recycling electrical and electronic equipment according to the European Directive on Waste Electrical and Electronic Equipment (WEEE 2002/96/EC) (as amended) and/or according to all implementing legislation of such Directive and all other applicable local laws.

11. Export Sales

- (a) If any licence or consent of any government or authority is required for the export or importation of the Goods or the use or sale of the Goods by the Buyer, the Buyer shall obtain the same at its own expense and if requested provide evidence of such licence or consent to the Seller.
- (b) Unless otherwise agreed, all payments shall be made through an irrevocable Letter of Credit confirmed by a London Clearing Bank to be established in favour of the Seller and having an initial validity equal to full delivery period plus one month. This Letter of Credit shall permit part shipment and provide for the release of 100% of the value of each shipment.

12. General

- (a) The quotation and each Contract shall be governed in all respects by the laws of England and the Buyer submits to the non-exclusive jurisdiction of the English Courts. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from each Contract.
- (b) The Seller may assign any Contract or any part of one to any person, firm or company. The Buyer shall not be entitled to assign any Contract or any part of one without the prior written consent of the Seller.
- (c) No term of any Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.