

# CONDITIONS OF SUPPLY

## 1. Definitions

In these Conditions of supply all references to (a) 'the Seller' are to Tyco Electronics (UK) Limited (b) 'the Buyer' are to the person firm or company by whom the order is given to the Seller (c) 'goods' are to the goods which are the subject of the order (d) 'services' are to the services which are the subject of the order (e) 'supply' are to the supply of such goods and/or services.

## 2. Entire Agreement

- (a) All contracts for supply shall be deemed to incorporate these Conditions which represent the complete agreement of the Seller and Buyer with regards to the supply except as otherwise specifically agreed in writing by the Seller ("the contract for supply"). These Conditions shall override any terms and conditions stipulated, incorporated, or referred to by the Buyer in any order, correspondence, negotiations or any other way.
- (b) Catalogues, price lists, advertisements and other published information are only indications of the type of products and services available and shall not form part of the contract for supply or any other contract with the Buyer nor be considered a collateral warranty or a representation inducing the same.

## 3. Acceptance

- (a) The Seller's catalogues, price lists and quotations do not constitute offers made by the Seller.
- (b) No order is binding on the Seller until accepted by the Seller's transmittal to the Buyer of an official Order Acknowledgement Form or invoice unless the Seller's quotation specifies that it is a bid in response to an invitation for bids in which event the order or award shall constitute acceptance of the bid in accordance with the bid terms.
- (c) Accepted orders are not subject to cancellation except upon (i) the written approval of the Seller and (ii) the payment of a fair and equitable charge to the Seller based upon the actual cost incurred by the Seller in respect of the order to the date cancellation is received and approved.

## 4. Specifications etc.

- (a) Where the Seller sells goods or performs services which are not to its standard specification, in preparing and submitting a specification and/or written acceptance of the Buyer's order the Seller relies upon the Buyer supplying all necessary relevant and accurate particulars and information. Any error or omissions contained in such particulars and information supplied at any time resulting in any loss or damage to the Buyer shall be the Buyer's sole responsibility.
- (b) Any drawings, illustrations, specifications or other material submitted by the Seller to the Buyer remain the property of the Seller and must not be communicated to a third party at any time resulting in any loss or damage to the Buyer shall be the Buyer's sole responsibility.

## 5. Prices

The price and terms of payment for the supply shall be as set out in the Seller's Order Acknowledgement Form except as otherwise provided for herein provided that the Seller reserves the right by notice given at any time before delivery of the goods or performance of the services to vary the price thereof if, after the date of the Order Acknowledgement Form, there is any increase or decrease in the Seller's general price list appertaining to such or similar goods or services. Time of payment of the price shall be of the essence of all contracts for supply.

## 6. Customs Duties and Taxes

All Customs and Excise duties import and/or export duties and all other taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the supply shall be borne by the Buyer and except as stated in the Order Acknowledgement Form are additional to the prices therein stated.

## 7. Exchange Fluctuations

The selling price of imported goods is based on exchange rates in effect at the date of the Order Acknowledgement Form and may, without prejudice to the provisions of Clause 5 above, at the Seller's discretion be increased to compensate for currency fluctuations.

## 8. Payment Terms

- (a) Except as otherwise specified in writing by the Seller or this Condition payment for the supply shall be due in full in pounds sterling within thirty days of the issue of the Seller's invoice.
- (b) The Seller reserves the right to suspend further deliveries or performance and/or to cancel allowance of further credit in the event of any payment not being made when due or if the Seller at its discretion at any time considers the financial circumstances of the Buyer have ceased to justify the terms allowed.

## 9. Delivery

Unless otherwise expressly provided in writing in the Order Acknowledgement Form, all sales are ex works Swindon England and delivery of the goods to the carrier shall constitute delivery thereof to the Buyer, and thereafter such goods shall be at the Buyer's risk. Any claim for shortage or damage occurring after such delivery or for transportation overcharges should be directed by the Buyer to the carrier. Any period or date for delivery or for the performance of services stated in the contract for supply or elsewhere is the Seller's best estimate when stated but is not a contractual statement.

## 10. Invoice

The Seller may invoice the Buyer in respect of the supply of goods at the earlier of the following dates: the date the goods are shipped or the date the goods are ready for shipment if they are held at the Seller's factory by instructions of the Buyer or for lack of shipping instructions from the Buyer. The Seller may invoice the Buyer for the supply of services at the earlier of the following dates: the date of the commencement of performance thereof or the date indicated in the Order Acknowledgement Form if performance is delayed by the instructions of the Buyer or by some other reason beyond the control of the Seller.

## 11. Passing of Property

- (a) No property in the title to the goods shall pass to the Buyer until their full price has been duly paid in cash to the Seller. Failure to pay the purchase price as aforesaid when due shall, without prejudice to any other remedies the Seller may have, entitle the Seller to repossess the goods or so much thereof as the Seller may determine from any premises where they may be or to which they may be attached. For the purpose of repossessing the goods or any part thereof the Buyer shall permit the Seller, its employees or agents to enter upon such premises and the Buyer shall pay to the Seller the cost of removal and transport of the goods or any part thereof. Nothing in this Condition shall confer any right on the Buyer to return any of the goods or to refuse or delay payment thereof.
- (b) The Buyer shall not sell, purport to sell or part with possession of the goods until the property therein shall have passed to the Buyer provided that with the prior written consent of the Seller the Buyer may contract to re-sell the goods. In any such re-sale the Buyer shall as regards the sub-purchaser act as principal but shall hold the proceeds of such re-sale in trust for the Seller in a separate bank account until the Seller has received the full purchase price due to the Seller.

## 12. Statutory Liability

- (a) The Seller does not exclude or restrict any legal liability it may have for death or personal injury resulting from the negligence of the Seller its employees, agents or sub-contractors.
- (b) The Seller does not exclude or restrict any of its legal obligations arising under Section 12 of the Sale of Goods Act 1979 and Section 2 of the Sale of Goods and Services Act 1982 and Part 1 of the Consumer Protection Act 1987.

## 13. Warranty

- (a) The Seller warrants the goods against defects in design, materials and workmanship which become apparent within 12 months of the date of delivery of the goods to the Buyer.
- (b) The Seller warrants that it will perform services with reasonable care and skill but this warranty shall not apply to any deficiency in such performance unless it become apparent within 12 months of the date of performance by the Seller.
- (c) The periods referred to in paragraphs (a) and (b) of this Clause shall hereinafter be called "the warranty period".
- (d) The Seller's obligation under this warranty is limited:-
  - (i) in the case of goods: to repairing or at its option supplying on an exchange basis replacements for any defective goods or part or parts thereof and making good any defect or defects in the goods which may develop under normal and proper use within the warranty period.
  - (ii) in the case of services: to the reperformance of the services or part or parts thereof shown to be deficient hereunder within the warranty period.
- (e) In the event of the Buyer becoming aware of a defect in goods or of a deficiency in the performance of services during the warranty period the Buyer shall promptly supply the Seller with written particulars of such defect or deficiency, use its best endeavours to provide all information and particulars necessary to enable the Seller or its agent to verify the notified particulars and to ascertain the nature and cause of the defect or deficiency claimed and shall afford the Seller and/or its agents full and proper access and facilities thereof and for making good the defect or deficiency.
- (f) The above warranty shall not apply to any defect in the goods or deficiency in the services where such defect or deficiency is caused in whole or in part by:
  - (i) The installation, storage, use, maintenance or repair of the goods in a manner reasonably considered by the Seller to be improper;
  - (ii) The Buyer and/or any user of the goods or of products incorporating the goods and/or any third party called in by the Buyer and/or such user as aforesaid changing or adding to the goods without the express permission in writing of the Seller;
  - (iii) Any other act of the Buyer or any third party.
- (g) The Seller shall be under no liability whatsoever for any loss or damage which results from or is caused by erroneous information or lack of information supplied by the Buyer as to the Buyer's requirements in relation to the specifications or use of the goods or services.
- (h) The Seller shall be under no liability whatsoever to repair, replace or make good any loss which results from defects or depreciation caused by damage in transit in circumstances outside the Seller's control, wear and tear, accident, neglect, misuse, dampness, abnormal temperature or other conditions or circumstances beyond the Seller's control as stipulated in Clause 19 below.
- (i) When any defective goods are replaced upon an exchange basis or defective goods are repaired or services are re-performed the provisions of this warranty clause shall apply to the re-performed services or replacement or repaired goods for the unexpired balance of the warranty period or the period of six months from the date of reperformance replacement or repair as the case may be whichever.
- (j) The above warranty provisions do not apply to any goods or services where it is impracticable or unsafe for the Seller to comply with the same.
- (k) All liability under the warranty provisions ceases at the expiration of the warranty period.

## 14. Exclusions

- (a) The Buyer shall be entitled to the benefit of the aforementioned warranty which is given in lieu of an replaces, excludes and extinguishes all and every condition or warranty whatsoever whether express or implied by statute, common law, trade usage, custom or otherwise.
- (b) It shall be the responsibility of the Buyer to determine the suitability of the goods and of any services for their intended purpose and for actual application and their compliance with applicable laws, regulation codes and standards and the Buyer assumes all risks pertaining thereto.
- (c) Notwithstanding the exclusion of any warranty as to fitness for purpose contained in these Conditions, as a separate Condition the Buyer agrees that in circumstances where the Seller relies on the skill of the Buyer to judge whether goods or services are fit for the purpose for which they are purchase or provided the Seller shall accept no liability whatsoever with regard to that judgement or any matter arising from that judgement and the Buyer will indemnify the Seller against and loss, damage, costs, claims or expense arising therefrom.

## 15. Rights and Remedies of the Buyer

- (a) If and insofar as the Seller may be held to be legally liable to the Buyer the sole right of redress of the Buyer against the Seller shall be as expressly provided for in these Conditions or any other conditions expressly agreed in writing by the Seller and the Buyer shall have no other remedies of any kind whatsoever against the Seller.
- (b) For the purposes of the contract for the supply the expression 'legal liability' of the Seller, its employees, agents or sub-contractors as found by any court or competent authority and, without prejudice to the generality of the foregoing, shall include:
  - (i) breach of any contractual obligation by virtue of the express or implied terms of the contract for supply and any fundamental breach and/or breach of fundamental term;
  - (ii) negligence arising by virtue of any act or omission which amounts to a failure to take reasonable care or exercise reasonable skill;
  - (iii) any misrepresentation or mis-statement made by or on behalf of the Seller;
  - (iv) any other breach of duty.and the expression 'legally liable' shall bear a corresponding meaning.
- (c) This clause shall not confer any rights or remedies on the Buyer to which the Buyer would not otherwise be entitled.

#### 16. Limit of Damages for Breach of Warranty

Notwithstanding the Seller's attempts to comply with the warranty the Seller is unable to do so the Seller shall pay monetary damages to the Buyer not exceeding the amount received by the Seller for the defective goods, or as the case may be, the deficient services.

#### 17. Damage to Physical Property

The Seller shall not be liable in respect of any loss or damage whatsoever kind or howsoever caused whether by reason of the negligence of the Seller or otherwise, to premises, plant or other physical property. In the event of legal liability being established the Seller shall not be liable to pay damages arising from the aforesaid loss or damage.

#### 18. Economic, Other Consequential Loss and Claims by Third Parties

Save as expressly provided for in the contract for supply the Seller shall in no circumstances be liable for the following loss or damage howsoever arising whether by reason of the Seller's negligence or otherwise, even if such loss or damage was, or ought reasonably to have been, in the contemplation of the parties at the date of the contract for supply as being likely to occur:

- (i) economic loss, which shall include, without limitation, loss of profits, reputation, goodwill, business, business, use, use of interest, services of employee or agent, anticipated savings, expenses rendered futile by the breach and expenses caused by the breach;
- (ii) any other consequential or indirect loss or damages;
- (iii) any claim made against the Buyer by any other party.

In the event of legal liability being established the Seller shall not be liable to pay damages arising from the aforesaid loss or damages.

#### 19. Events beyond the control of the Seller

(a) The Seller does not accept any liability incurred under the contract for supply wherever and to the extent to which the fulfilment of the Seller's obligations is prevented frustrated impeded and/or delayed as a consequence of any 'force majeure' and/or any occurrence whatever beyond the control of the Seller, such to include, without prejudice to the generality of the foregoing:

- (i) act of God, fires, floods or other casualties;
- (ii) wars, riots, civil commotion, embargoes, governmental regulations or inability to obtain necessary materials from the Seller's usual sources of supply;
- (iii) shortage of transport facilities or delays in transit;
- (iv) existing or future strikes or other labour troubles affecting thereof whether involving the Seller's employees or employees of others and regardless of the responsibility or fault on the part of the employers;
- (v) failure in whole or in part of the power supplies.

(b) The Seller undertakes however to make every reasonable endeavour within its power to overcome difficulties arising in connection therewith but reserves the right to cancel suspend or vary its obligations under the contract for supply in the event of shortages of goods of available resources for their production storage or delivery or continued difficulty in rendering services arising from any of the events or circumstances referred to in paragraph (a) of this clause, the Seller reserves the right to allocate as it may think fit its available goods and resources and performance of services between customers and whom it has contractual obligations in respect thereof and shall not be obliged to purchase goods from third parties or sub-contract services to make good such shortages, or performance.

#### 20. Maximum Limit of Damages

If, notwithstanding the provisions of Clauses 13 to 19 inclusive and Clauses 21 and 22, the Seller shall in any circumstances whatsoever be held liable to the Buyer then;

- (i) the Buyer's sole rights of redress against the Seller shall be limited to damages;
- (ii) the Seller's total liability in respect of any goods and/or services notwithstanding the number of incidents for which the Seller is found legally liable shall in no circumstances exceed the amount received by the Seller for the goods or services as the case may be.

#### 21. Insurance

(a) The precise limits of any appropriate insurance cover are primarily within the Buyer's knowledge thereby enabling the Buyer to effect his own insurance cover at more economic rates than the Seller. The Buyer agrees that insofar as the Buyer may require any insurance cover the Buyer shall effect the same, such to include without prejudice to the generality of the foregoing:

- (i) damage to physical property of any kind;
  - (ii) economic and other consequential or indirect loss or damage;
- therefore the Buyer acknowledges and accept that it is reasonable for the Seller to limit its legal liability and its liability to pay damages as set out in these Conditions.

(b) The Buyer hereby agrees and acknowledges that it will procure that the Buyer's insurers shall in no circumstances whatsoever have any rights or remedies against the Seller additional to those of the Buyer.

#### 22. Indemnity

The Buyer agrees to indemnify the Seller against any loss, damage, costs, claims or expenses incurred by the Seller in respect of any liability established against the Seller by a third party arising out of or in connection with the contract for supply.

#### 23. Change in Buyer's Financial Circumstances

If the Buyer makes any composition or arrangement with creditors or, being a company, goes into liquidation whether voluntary or compulsory or, being an individual or firm, if he or any partner commits any act of bankruptcy or if a Receiver is appointed in respect of any assets of the Buyer or if the Buyer fails duly to pay for any goods or services or to comply with any other requirement under any contract for supply or if the Seller considers in its absolute discretion that the financial circumstances of the Buyer to not justify any payment or credit terms or arrangement previously agreed the Seller may at its option either require payment in cash before despatch of goods remaining to be delivered to performance of services remaining to be performed or may cancel further deliveries or work without prejudice to any other rights or remedies of the Seller and the Buyer shall remain liable for completed and partially completed deliveries and work to the same extent as required under Condition 3(c) of these Conditions in the event of cancellation.

#### 24. Health & Safety

- (a) The Buyer agrees only to use the goods and obtain services for uses specified in the Seller's current sales literature or for other uses which the Seller has specifically notified in writing to the Buyer as being the Seller's opinion free from risk to health and safety.
- (b) The Buyer agrees to pay due regard to any information or advice relating to the user of the goods or product of the services which the Seller may at any time furnish to it and agrees that before the goods are used it will, if requested by the Seller, furnish the Seller with a written undertaking to take any steps which the Seller may specify with a view to ensuring that the goods will be safe and without risk to health when used.
- (c) Any written undertaking given pursuant to paragraph (b) above shall be deemed to have effect as if it formed part of the contract for supply.

#### 25. Delivery by Instalments

Each delivery or part delivery of any order shall be deemed to be sold under a separate contract. Neither failure on the Seller's part to make any delivery or part delivery in accordance with the contract for supply nor any claim by the Buyer in respect of such delivery or part delivery shall entitle the Buyer to reject the balance of the order.

#### 26. Quantities

On all orders the Seller shall have the right to ship and bill for a quantity of goods greater or less than the exact quantity up to a variation of 10% unless otherwise expressly provided for the Order Acknowledgement Form.

#### 27. Patent Indemnity

When goods are made or adapted buy the Seller in accordance with the Buyer's specifications, the Buyer shall indemnify the Seller against all costs, claims and expenses incurred by the Seller in respect of the infringement or alleged infringement by such goods of any patents, registered designs, trade marks or other rights belonging to third parties.

#### 28. Reels

The Seller shall retain title to all reels are returned in good order to the Seller, Swindon, England at the Buyer's expense within one year from the date of shipment. Return freight will be allowed on shipments of returnable reels over 100 kilos.

#### 29. Engineering Charges

The Seller reserves the right to charge the Buyer for engineering charges and expenses (whether internal or to third parties) incurred by the Seller in relation to the design or manufacture of the goods, such to include (without limitation) design costs and the cost of tools. Such charges and expenses shall be payable by the Buyer in addition to the purchase price for the goods. The Seller shall remain the owner or tools and designs and all copyright and other rights thereto whether or not such charges are paid by the Buyer.

#### 30. Buyer's Property

Any material or property of the Buyer or material or property supplied to the Seller by or on behalf of the Buyer is supplied entirely at the Buyer's risk and the Seller will not be liable or held responsible for any loss or damage to such material or property whether or not attributable to the acts, defaults or negligence of the Seller or any of the Seller's employees or agents.

#### 31. Export Contracts

All export contracts for supply by the Seller are subject to any necessary licences and Exchange Control authorisations being obtained.

#### 32. Assignment

The Buyer shall not assign or otherwise transfer any contract for supply or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the Seller. Any such attempted assignment or transfer by the Buyer without the written consent of the Seller is void.

#### 33. Waiver

The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach and shall only apply to the individual contract for supply in relation to which it is made.

#### 34. Severability

If any term or condition herein or part thereof is held to be invalid for any reason by any court or competent authority it is to that extent to be deemed removed from the contract for supply without prejudice to the validity or other effectiveness of the remaining terms and conditions thereof.

#### 35. English Law

The formation, construction and performance of all contracts for supply shall be governed in all respects by English Law. The Buyer and the Seller hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

#### 36. Headings

The headings of these Conditions do not form part of the Conditions and shall not effect the interpretation thereof.