

Abacus Electronics Holdings Limited - Terms and Conditions of Sale

1. DEFINITIONS

"Buyer" means the person(s) or company whose order for the Goods is accepted by the Company.
"Company", "us", and "we" means Abacus Electronics Holdings Limited and/or its subsidiaries.
"Conditions" means these terms and Conditions.
"Contract" means any contract between the Company and the Buyer for the sale and purchase of Goods.
"Goods" means any goods supplied or to be supplied by the Company to the Buyer.
"in writing" or "written" includes all electronic communications.

2. GENERAL

All Goods are supplied by us subject to these Conditions, which supersede any earlier sets of conditions and which shall override any terms or conditions stipulated or referred to by the Buyer whether in an order or in any negotiations. The placing of an order by the Buyer shall be deemed conclusive proof that the Buyer has accepted these Conditions. The relaxation or waiver by us of any of these Conditions on any occasion shall act merely as a waiver on that occasion and shall not affect our right to enforce any of these Conditions on any subsequent occasion. Any variation of these Conditions must be confirmed in writing by us and will not otherwise be valid. Any description given by us of the Goods is given by way of identification only, and is not guaranteed or represented to be accurate, and the use of such description shall not constitute a contract of sale by description.

3. PRICES

Quotations represent no obligation until we accept the Buyer's order. All orders are accepted for execution at prices current at the date of despatch. Prices are quoted ex-works and are subject to change or withdrawal without notice. Packing, delivery and insurance are charged extra and prices do not include VAT. No discounts shall apply unless previously agreed by us in writing.

4. PAYMENT

Terms of payment are strictly net cash with order unless a credit account has been established with us. Where a credit account has been established with us, payment must be made for each instalment of Goods delivered within 30 days after delivery (whether the Goods delivered are the whole or only part of the Goods ordered) and time of payment of the price shall be of the essence.

We reserve the right at our discretion to refuse to establish credit account facilities, and/or to terminate any such credit account facilities already in existence. Without prejudice to our other rights, interest at 8% above HSBC Bank plc base rate shall be payable on any payment which is overdue until actual payment, under the Late Payment of Commercial Debts (Interest) Act 1998. Notwithstanding any statement to the contrary by the Buyer, we shall be entitled in our absolute discretion to appropriate any payment received by us from the Buyer to or towards any indebtedness of the Buyer with us, whether under this or under any other contract.

5. RE-SCHEDULING OF ORDERS

Where an order includes an agreed delivery date or dates, these may be re-scheduled only with our specific written agreement and in any event we will require not less than three months' prior written notice of any required re-scheduling. Any stockholding costs incurred as a result of any re-scheduling will be payable to us by the Buyer.

6. CANCELLATION AND RETURNS

In the event of the cancellation of an order we reserve the right to charge the Buyer up to 100% for stock held by us pending shipment, up to 100% for items where we cannot cancel delivery from our supplier and up to 50% for the remaining balance. In particular (but without limitation), in the event of cancellation by the Buyer of part only of an order, we shall be entitled to recalculate the price for the uncanceled part of the order as if it constituted the whole order and to re-invoice the Buyer accordingly.

No returns will be permitted without our prior consent in writing and must be returned at the Buyer's expenses in original condition and the original packaging. Only complete pack quantities will be accepted. If we agree to accept a return other than in the event of defective Goods, the Buyer will be charged a handling charge of 20% of invoice value, plus VAT.

7. DELIVERY

Any time or date quoted by us for delivery is given and intended as an estimate only. Whilst every endeavour will be made to meet an estimated time of delivery for delivery, we shall not be liable to make good any damage or loss whether arising directly or indirectly out of delay in delivery.

We reserve the right to deliver by instalments against any order.

Non-delivery must be reported immediately in writing to us and to the carrier within 7 days of the date of despatch.

Where we tender delivery in accordance with the Contract and the Buyer either refuses to accept delivery at that time or subsequently returns the Goods without good cause, he shall be deemed to be in breach of the Contract and we shall be entitled to treat the order or any relevant part of it as cancelled by the Buyer (without prejudice to any other rights we may have).

When delivery is delayed for reasons attributable to the Buyer or his agents, storage and other additional costs will be charged to the Buyer and the Goods will be at the Buyer's risk from the commencement of such delay. We reserve the right to invoice the Goods at the original delivery date.

Buyers outside the UK are responsible at their own expense for obtaining any import licence required in the country for which the Goods are destined.

8. TRANSIT

We will replace free of charge Goods damaged or lost in transit provided the Buyer gives us written notification of such damage or loss within seven days of invoice date and time shall be of the essence with regard to this clause.

9. INSPECTION

When the Buyer examines the Goods before delivery is effected he shall have no further right to inspect on arrival other than to notify us of any loss or damage in transit. When the Goods are delivered to the Buyer without any previous examination by him, he shall inspect them immediately on arrival and shall within 14 days of such inspection give written notice to us of any matter or thing by reason of which he may allege that the Goods are not in accordance with the Contract. If the Buyer shall fail to give such notice the Goods shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be bound to accept and pay for them accordingly.

10. OWNERSHIP

Until the Buyer makes payment in full for the Goods (and has made payment of all other amounts due from the Buyer to the Company) he shall at all times keep them in his possession and control and shall not remove them from the United Kingdom without our consent and will not sell or otherwise dispose of or deal with the Goods. Legal and equitable ownership of the Goods remains with us, notwithstanding delivery thereof to the Buyer, until we have received in cash or cleared funds payment in full of the price of the Goods and all other amounts due from the Buyer to the Company. Until such time, the Buyer shall have possession of the Goods as our bailee. We will permit the Buyer to sell the Goods on in the ordinary course of business (either separately or as part of constructed products), but in that event the proceeds of sale thereof will be held by the Buyer as our trustee to the extent of the Buyer's indebtedness to us. Pending any such sale, the Buyer will be obliged to keep the Goods separate from his own Goods until the property therein passes to the Buyer.

11. PASSING OF RISK

Notwithstanding that ownership of the same may remain with us, as from the time of the delivery of the Goods to the Buyer the risk of any loss or damage of the Goods from whatever cause arising shall be borne by the Buyer.

12. MARKS AND NUMBERS

The Buyer shall not remove or otherwise interfere with the marks or numbers on any Goods supplied by us.

13. DEFAULT

If the Buyer makes default in any payment on the due date (time being of the essence) or is otherwise in breach of any of these terms, or if (being an individual) he commits an act of bankruptcy or has a receiving order made against him or (being a company) enters into liquidation (whether compulsory or voluntary) or has a receiver or manager appointed to the whole or any part of its business or undertaking, or if distress or execution is levied or threatened upon any of the Buyer's property, then in any such case (and without prejudice to any other rights we have):-

- (i) we shall be entitled to repossess and re-sell Goods delivered to the Buyer and not paid for in full and for the purpose of doing so to enter upon the property in which they are situated;

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- (ii) we shall be entitled to suspend all further deliveries to the Buyer until the default is made good or to refuse to deliver any further goods to the Buyer and to re-sell any further goods ordered by the Buyer whether they are the balance of an order or the whole part of a further order;
- (iii) the Buyer shall in any event be liable to made good to us our loss of profit on all such Goods and all costs and expenses of repossession, storage, insurance and sale and to pay to us interest as provided above until actual payment.

14. DEFECTIVE GOODS

If Goods were manufactured in accordance with Buyer's drawings and specifications, but Goods are defective, we shall be entitled to charge for all additional expenses and costs relating to re-work of Goods. We shall be under no liability in respect of any defect or fault in the Goods arising from any drawing, design or specification supplied by the Buyer, nor that arising from willful damage or misuse or alteration or repair or modification of Goods without our approval.

If any Goods are or become faulty or defective by reason only of the use of defective materials or faulty workmanship within a period of 90 days from the date of delivery, we will (at our option) either refund the price of such Goods or replace or repair such Goods provided that the Buyer shall have notified us in writing of the fault or defect in the Goods and shall have returned the faulty or defective Goods to us for inspection within a period of 90 days from the date of delivery.

Such liability is in place of any other conditions or warranties, express or implied as to the quality or fitness for any purpose of the Goods, and all such conditions and warranties are, to the extent permitted by law, hereby expressly excluded to the intent that save as provided above, we shall not have any liability to the Buyer or to any third party in respect of any loss of or defect in the Goods supplied or in respect of any personal injury or damage or loss of any kind directly or indirectly attributable to faults or defects in such Goods, and the Buyer will indemnify us against any such claims. Under no circumstances will we be liable for any consequential, indirect incidental or special loss or damage including, but not limited to loss of profit, goodwill or opportunity suffered by the Buyer. In the event that we are under any liability to the Buyer in respect of the Goods, the same shall form a separate cause of action and shall not entitle the Buyer to any setting off and the full amount of all sums payable to us from the Buyer hereunder shall remain due and owing. All semi-conductors are covered by their respective manufacturer's warranty and the Buyer shall subject these to a batch check before use or installation into equipment. Goods returned under this guarantee shall be delivered to our premises at the Buyer's expense and if found not to be defective (or when the defect is attributable to the Buyer's design or materials) will be returned to the Buyer at its expense and subject to a testing charge of 15% of the invoice price together with VAT thereon if applicable.

The Goods shall not be considered defective unless:

- (i) they are not in accordance with the Buyer's specification where this is agreed specification; or
- (ii) if the Buyer has no such specification or to the extent that the Buyer's specification is silent as to any aspect of the design, function, performance, tolerances, quality or characteristics of the Goods, they do not conform to our published information or if no such information has been published the Goods do not conform to that which we consider normal or usual for products of the kind sold at a similar price.

We are not in a position to ensure that the Buyer's specification is correct and/or sufficient for the purposes intended by the Buyer or any other purpose, and the Buyer must satisfy himself on this point.

15. USE OF GOODS AND ROHS WARRANTY

The Buyer acknowledges that he is exclusively responsible for detailing the specification for all Goods ordered from us, for ascertaining the use to which they will be put, and for determining their ability to function for that purpose. Accordingly (and without limiting the generality of the previous condition) we have no liability arising out of any advice given by us to the Buyer relating to his requirements in respect of any Goods.

It is Company policy to identify and offer goods to a Buyer as RoHS compliant or lead free, only after specific requirements have been met. The Company performs no testing of goods and relies solely on the manufacturer of the goods for identification of RoHS compliance and for absence of lead, and makes no warranty, certification or declaration of compliance concerning the Goods. Goods are advertised or offered as RoHS compliant or lead free only after sufficient evidence is received from the component manufacturer. Any relevant evidence will be retained by the Company.

16. COMPUTER SOFTWARE

Where any Goods supplied by us embody, include or contain computer program(s) and/or related documentation the copyright in which is owned by a third party, all rights and liabilities associated with the use and/or reproduction thereof will be subject to the terms applicable end user licence to the exclusion of all liabilities and obligations on our part.

17. INTELLECTUAL PROPERTY

The Buyer will indemnify us against all liabilities for infringement of third party intellectual property right arising from our compliance with the Buyer's specific requirements regarding design or specification for the Goods or arising from the use of the Goods in combination with other products except as aforesaid. We agree to defend any action or proceedings brought against the Buyer insofar as the same are based on a claim that any Goods supplied hereunder infringe any United Kingdom intellectual property rights, provided we are notified immediately and in writing of such claim and are given all such authority, information and assistance as is necessary for proper defence of the same. Furthermore, we will indemnify the Buyer against all damages and costs awarded against the Buyer in respect of any such claim provided that the same does not arise solely by reason of the use of the Goods in conjunction with other products or elements. In the event that the Goods or the use thereof (subject as aforesaid) are held to constitute an infringement of any United Kingdom intellectual property rights and the use is thereby prevented, we will at our own expense and at our option either procure for the Buyer the right to continue using the Goods, or replace the same with a non-infringing product, or modify the Goods so that they become non-infringing, or retake possession of the Goods and refund the purchase price therefor. Subject to the foregoing, we shall be under no liability to the Buyer for any loss, damage or injury, whether direct or indirect, resulting from any intellectual property right infringements by the Goods.

18. EXPORT CONTROL

We shall in no circumstances be liable for any damage, loss or claim occasioned by any act or omission on the part of the Buyer in contravention of any regulations issued by the United States Government concerning the export of Goods, services or technology. Any Goods supplied by us whose export from the United Kingdom is restricted by any Government regulations shall not be exported by the Buyer without the prior approval of the relevant authorities concerned with the administration of such regulations.

19. TOOLS

Tools made or purchased by us for the manufacture of Goods to be supplied under the Contract and the copyright therein remain our property notwithstanding that the Buyer may have been charged a sum in respect of their cost.

20. BUYER'S ITEMS

Items supplied by the Buyer for the Contract shall be of suitable quality and shall be provided free of charge in sufficient quantities and at the times required by us. Any defect in items provided by the Buyer shall not entitle the Buyer to rescind the Contract, reject the Goods, make deductions from the Contract price or claim damages in respect of such effect and the Buyer shall indemnify and keep us indemnified from and against all action, demands, claims, losses or costs arising from the supply of defective items by the Buyer.

21. LIEN

In the event of the Buyer's insolvency we shall be entitled (in addition to any lien arising by law) to a general lien on all the Buyer's Goods in our possession (although the same or some of them have been paid for) for any money due either in respect of such Goods or in respect of any general or particular balance or other money due from the Buyer to us, whether under the same or any other order.

22. FORCE MAJEURE

We shall be relieved of all liability for obligations incurred to the Buyer whenever and to the extent to which the fulfillment of such obligation is prevented, frustrated or impeded in consequence of any statute, rules, regulations, orders or requisitions issued by any government department, council or other duly constituted authority or by reason of any strikes, combination of workmen, lockouts, breakdown of plant, accident, civil commotion, war, force majeure or any other cause beyond our control.

23. VALIDITY

In the event that any of these Conditions shall be held to be invalid, unlawful or unenforceable to any extent then such part of these Conditions shall be severed from the remaining Conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

24. LAW AND JURISDICTION

These Conditions and the Contract and all matters pertaining thereto shall be governed by English Law and the English courts shall have jurisdiction in relation thereto.