

**1. GENERAL**

- 1.1 These Conditions of sale shall constitute the entire agreement between Active Silicon Limited (the Seller) and the Buyer (the Buyer). By placing purchase orders for the products or services (the Product) the Buyer thereby accepts these terms and conditions which shall be in substitution of any other expressed or implied written or oral terms arrangements customs or practices, unless agreed in writing between Buyer and Seller. All terms conditions arrangements customs and practices conflicting with these terms are hereby excluded. All Product brochures, catalogues, data sheets and other printed material are for general guidance only and their content is specifically excluded from any contract.

**2. DESCRIPTION**

- 2.1 The Seller does not make any representations concerning the suitability of goods unless confirmed by the Seller in writing. In entering into the contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
- 2.2 Except for any written representations as provided for in clause 2.1 above, the Seller grants no other warranties relating to defects in the design workmanship or materials of the goods, and all other conditions, warranties, stipulations or other statements whatsoever, whether express or implied, by statute at common law or otherwise howsoever, relating to such defects in the goods, are hereby excluded; in particular (but without limitation of the foregoing) the Seller grants no warranties (other than as provided under clause 2.1) regarding the fitness for purpose, performance, use, quality or merchantability of the goods, whether express or implied, by statute at common law or otherwise howsoever.

**3. STATUTORY OBLIGATIONS**

- 3.1 The Buyer and Seller shall comply with all relevant statutes rules regulations and bye-laws and EU directives having direct effect within the UK affecting its obligations and the performance of the contract.
- 3.2 In the event of (re)export by the Buyer, the Buyer agrees to comply with all applicable export control laws and regulations.
- 3.3 Active Silicon reserves the right to withhold shipment and/or cancel orders (and provide a full refund) for any order that it believes will contravene export regulations.

**4. INSPECTION AND ACCEPTANCE**

- 4.1 All orders are subject to written acceptance by the Seller.
- 4.2 The Buyer agrees that within a period of 72 hours from the time of delivery he shall have inspected the Product and shall have notified the Seller of any defect in the Product as grounds for rejection. Failure to notify the Seller within the period shall constitute acceptance of the Product by the Buyer.
- 4.3 In case of any defect being so notified the Seller shall at his exclusive discretion and without prejudice to any of the Seller's other rights but without limitation:
- 4.3.1 test repair replace or make good the defect.
- 4.3.2 remove the Product from the Buyer's premises for the purposes of tests repair or replacement.
- 4.3.3 show reasonable cause for the Product to be accepted by the Buyer.
- 4.3.4 provide a full refund less original delivery costs provided the goods are returned in their original packaging and in an unused condition.

**5. TITLE, DELIVERY AND INSURANCE**

- 5.1 The Seller warrants it has good title in the Product.
- 5.2 Neither title in the Product nor ownership of the Product shall pass to the Buyer until payment in full has been received by the Seller. The Buyer acknowledges the retention of title by the Seller.
- 5.3 The Buyer agrees to receive the Products from the Seller or the Seller's agents.
- 5.4 Time of delivery shall be an estimate only and shall not be of the essence.
- 5.5 The Buyer may not delay the delivery without the Seller's written consent.
- 5.6 The Product shall be supplied under Incoterms EXW, DAP less duties (see Clause 6.1.1) or similar as agreed between the parties.
- 5.7 The Product shall on delivery to the Buyer's designated delivery address become the absolute responsibility of the Buyer. In addition the Product when supplied on Incoterms EXW shall be the responsibility of the Buyer on collection by the Seller's transportation agent from the Buyer's premises.
- 5.8 If the Seller is responsible for delivery to Buyer's designated delivery address, the Seller reserves the right to charge a reasonable fee for insuring the Products during transit in addition to the delivery fee. If the Buyer requests not to have the Products insured, then delivery is at risk to the Buyer.
- 5.9 If the Buyer returns the Products to the Seller at any time, the Buyer will comprehensively insure the Product and all insurance costs will be borne by the Buyer.
- 5.10 The Buyer agrees to indemnify and keep indemnified the Seller from and against any cost, loss, liability, claim or damage which the Buyer incurs or suffers as a result of any default by the Seller in the due and punctual performance of any of its obligations under this Agreement.

**6. PRICE**

- 6.1 The price shall be as stated on the Seller's quotation. The Buyer also agrees to pay:
- 6.1.1 All import duties and sales tax ("VAT") at the rate in force at that time.
- 6.1.2 all reasonable delivery and transit insurance costs together with VAT thereon if the Buyer requests the Seller to arrange delivery.
- 6.1.3 any costs or increase in costs which the Seller can reasonably show were outside the control of the Seller such as changes in VAT or other legal tax. For imported Product these costs shall include any adverse movement in currency exchange rate.

**7. PAYMENT**

- 7.1 The Buyer agrees to pay the Seller's invoices promptly and on the terms stipulated on the invoices. To this end the Buyer agrees that the time of supply is when the Product leaves the Buyer's premises when under Incoterms EXW or otherwise on delivery at the Buyer's designated delivery address.
- 7.2 Where only part of the ordered Product has been delivered the Buyer agrees to promptly pay all the Seller's invoices for the Product delivered up to the dates of such invoices. The Buyer shall not withhold such payment.
- 7.3 The Seller will invoice the Buyer interest on all unpaid sums at a pro-rata daily rate equal to 5% per month above the Barclays Bank standard UK base rate at the date of invoice. The Buyer agrees to pay these sums promptly.
- 7.4 The Buyer will not unreasonably withhold payment.
- 7.5 Non-payment shall not absolve the Buyer from any obligations under this agreement.

**8. CONFIDENTIALITY**

The Buyer and Seller jointly accept that all information received by the Seller or Buyer including quotations and specifications are confidential and without the prior written consent of the other party (that consent not being unreasonably withheld) will not disclose the contents to any persons other than to those who it can reasonably be shown need to know.

**9. CANCELLATION**

- 9.1 Either party may terminate the contract with immediate effect by serving notice on the other party in any of the following events:
- 9.1.1 the other party ceases or threatens to cease business makes or offers to make any arrangement for bankruptcy or an administration or receiving order is made against it or if any resolution or petition is passed or made for its winding up (other than solely for the purposes of amalgamation or reconstruction) or if an administrator administrative receiver, receiver or manager is appointed of any of its business assets or undertakings or if it suffers seizure of any assets for non payment of any debt or if it takes or suffers any similar action in consequence of debt or any similar action in consequence of debt or if in the reasonable opinion of the terminating party it believes its material interests in the contract to be in jeopardy.
- 9.1.2 there is a change in control of the other party which in the reasonable opinion of the party terminating adversely affects the position rights or interests of the party terminating or:
- 9.1.3 the Buyer does not pay any sum payable under this agreement within 14 days of the due date.
- 9.1.4 the other party shall commit any other breach of any term or condition of this agreement and (if remediable) shall fail to remedy the breach within 10 days of written notice requiring it to do so.

**10. CHANGES**

- 10.1 If the Buyer requests material change or amendment to the purchase order of specification of the Product ordered then the Seller shall at its sole discretion either:
- 10.1.1 submit a quotation for the change or revision or amendment of the Product or performance of the contract to the Buyer which shall be subject to the Buyer's written acceptance of that quotation together with any further purchase order or authorisation.
- 10.1.2 shall not agree to any such change or amendment to the specification of the Product and failure to agree shall not be grounds for termination.

**11. INTELLECTUAL PROPERTY RIGHTS**

Ownership of all the Seller's intellectual property rights remains with the Seller and nothing in this agreement shall be construed as transferring or assigning any of the Seller's intellectual property rights to the Buyer.

**12. WARRANTY**

- 12.1 Unless otherwise stated, the warranty term will be two years from the date of delivery of the Product to the Buyer's site.
- 12.2 The Buyer shall provide the Seller with full details of any defect and at the Buyer's expense will return the Product to the Seller's workshops.
- 12.3 The Seller shall at his sole discretion but without limitation test repair replace or make good the defect and return the Product to the Buyer at the Seller's expense.
- 12.4 The Seller shall not be responsible for making good any damage to the Product or other equipment caused by misuse or installation or alteration to the Product by the Buyer and the Buyer agrees to pay (subject to his

written confirmation) for all such testing and repairs carried out by the Buyer in ascertaining any damage or malfunction.

**13. FORCE MAJEURE**

Neither party shall be liable to the other for any loss or damage which may be suffered by the other as a direct or indirect result of the performance of its obligations under the contract being prevented hindered or delayed by reason of circumstances or events beyond its reasonable control including but not limited to acts of God war riot strike lock-out trade dispute or labour disturbance accident breakdown of plant or machinery fire flood storm explosion epidemic or government action.

**14. MISCELLANEOUS**

- 14.1 No modification alteration or waiver of the provisions of this agreement shall be valid unless made in writing and signed by a director of the Seller and the Buyer's authorized signatory.
- 14.2 Any notice required to be given under this agreement shall be deemed to be duly served when delivery is by hand or by sending by recorded delivery post or by other fast courier or facsimile to the relevant address or relevant telecommunications number of the party as set out in the order or order confirmation documents or such other address or number as that party may have notified to the other pursuant to the provisions of this clause 15.2. Any such notice shall be deemed to have been given or received at the time of delivery or transmission (if delivered by hand or courier or given by facsimile) or received 2 working days next following the day of sending (if sent by post). In proving the fact of dispatch it shall be sufficient to show that the envelope was properly addressed stamped and posted.
- 14.3 This contract shall be governed and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts or such other jurisdiction as the Seller may elect.