

**1. GENERAL**

1.1 These Conditions of sale shall constitute the entire agreement between Active Silicon, Inc. (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. 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 & DISCLAIMER**

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 PRODUCTS OR 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 WHETHER EXPRESS OR IMPLIED (OTHER THAN AS PROVIDED UNDER CLAUSE 2.1) INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ALONG WITH ANY OTHER WARRANTY OF, PERFORMANCE, USE, QUALITY OR MERCHANTABILITY OF THE GOODS, GRANTED BY STATUTE OR OTHERWISE WHATSOEVER.

**3. STATUTORY OBLIGATIONS**

3.1 Seller shall comply with all applicable federal, state and local laws, government orders and regulations in performing applicable purchase orders and contracts,

3.2 In the event of (re)export by the Buyer, the Buyer agrees to comply with all applicable export control laws and 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 Sellers other rights but without limitation:

4.3.1 test repair replace or make good the defect

4.3.2 remove the Product from the Buyers 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. DELIVERY**

5.1 Time of delivery shall be an estimate only and shall not be of the essence.

5.2 The Buyer agrees to receive the Products from the Seller or the Sellers agents.

5.3 The Buyer may not delay the delivery without the Sellers written consent.

5.4 Products are sold F.O.B. ("Free on Board") at the place indicated by the Seller.

5.5 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. TITLE AND INSURANCE**

6.1 The Seller warrants it has good title in the Product.

6.2 The Product shall on delivery to the Buyer's designated delivery address become the absolute responsibility of the Buyer.

6.3 For Products sold "F.O.B. Ship Point", this term shall mean the Buyer will insure the Product during transit to the Buyer's designated delivery address and all such insurance and shipping costs will be paid by the Buyer.

6.4 For Products sold "F.O.B. Destination", this term shall mean the Seller will insure the Product during transit to the Buyer's designated delivery address and all such insurance and shipping costs will be paid by the Buyer to the Seller.

6.5 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.

**7. PRICE & TAXES**

7.1 The price shall be as stated on the Seller's quotation. The Buyer also agrees to pay:

7.1.1 (Unless prohibited by law) all federal, state or local taxes of any nature which arise out of the sale of the Product or the provision of services hereunder. Any taxes which are the responsibility of Buyer hereunder shall be collected and/or prepaid by Seller and added as a separate item on Buyer's invoice.

7.1.2 any costs or increase in costs which the Seller can reasonably show were outside the control of the Seller such as changes in sales tax rates or other legal tax. For imported Product these costs shall include any adverse movement in currency exchange rate.

**8. PAYMENT**

8.1 The Buyer agrees to pay the Sellers invoices promptly and on the terms stipulated on the invoices. To this end the Buyer agrees that time of delivery will be the date of the Products' delivery to the Buyers designated delivery address.

8.2 Where only part of the ordered Product has been delivered the Buyer agrees to promptly pay all the Sellers invoices for the Product delivered up to the dates of such invoices. The Buyer shall not withhold such payment.

8.3 The Seller will invoice the Buyer interest on all unpaid sums at a pro-rata daily rate equal to 5% per month above the Wall Street Journal Prime Rate at the date of invoice, or the highest applicable non-usurious rate permitted by law, whichever is lower. The Buyer agrees to pay these sums promptly.

8.4 The Buyer will not unreasonably withhold payment.

8.5 Non-payment shall not absolve the Buyer from any obligations under this agreement.

**9. 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.

**10. CANCELLATION**

10.1 Either party may terminate the contract with immediate effect by serving notice on the other party in any of the following events:

10.1.1 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.

10.1.2 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:

10.1.3 the Buyer does not pay any sum payable under this agreement within 14 days of the due date.

10.1.4 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.

**11. CHANGES**

11.1 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:

- 11.1.1 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 Buyers written acceptance of that quotation together with any further purchase order or authorisation.
- 11.1.2 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.

## **12. 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 Sellers intellectual property rights to the Buyer.

## **13. WARRANTY**

- 13.1 Unless otherwise stated, the warranty period will be two years from the date of delivery of the Product to the Buyers site.
- 13.2 The Buyer shall provide the Seller with full details of any defect and at the Buyer's expense will return the Product to the Sellers workshops.
- 13.3 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.
- 13.4 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.

## **14. 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.

## **15. MISCELLANEOUS**

- 15.1 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 Buyers authorised signatory.
- 15.2 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.
- 15.3 The purchase order and/or contract will be construed in accordance with, and all disputes will be governed by, the laws of the State of Maryland, without regard to its conflict of laws rules. Seller irrevocably consents to the personal jurisdiction of the state and federal courts in and for Anne Arundel County, Maryland, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.