

Kontron UK Limited- Terms and Conditions of Sale

DEFINITIONS

“Buyer” is the person whose order for the Goods is accepted by the Vendor;
“Conditions” are these terms and conditions, or any special terms and conditions on the face of the Order Confirmation;
“Contract” is the contract for the purchase and sale of the Goods between the Buyer and the Vendor;
“Estimated Times” has the meaning given in clause 3.3;
“Goods” are the goods and/ or services (including any instalment of the goods or any parts for them) which the Vendor is to supply to the Buyer;
“Guarantee” has the meaning given in clause 11.1;
“Invoice Date” has the meaning given in clause 7.1;
“Order Confirmation” has the meaning given in clause 2.1;
“Tender” is a tender made by the Vendor’s authorised representative and includes any quotation, whether oral or in writing; and
“Vendor” is Kontron UK Limited, a company registered in England and Wales with number 03204417 and whose registered office is at Appledram Barns, Birdham Road, Chichester, West Sussex, PO20 7EQ.

1 BASIS OF THE SALE

1.1 All Goods are sold subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

1.2 No variation to these Conditions shall be binding unless agreed in writing by a director of the Vendor.

1.3 The Vendor’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Vendor in writing. In entering into the Contract, the Buyer acknowledges that it has not entered into this Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract, except in the case of fraudulent misrepresentation. The Buyer shall not have any claim for innocent or negligent misrepresentation on the basis of any statement in this Contract.

2 CONTRACT

2.1 The Vendor’s quotation shall be deemed to be an invitation to the Buyer to make an offer by way of an order to purchase the Goods subject to the Conditions. The Contract shall not come into existence until the Vendor’s authorised representative has accepted the Buyer’s order in writing (“Order Confirmation”).

2.2 The Buyer is responsible for ensuring the accuracy of the terms of any order and for giving the Vendor all necessary information, including any specifications of Goods, within a sufficient time to enable the Vendor to perform the Contract.

2.3 The quantity and description of and any specification for the Goods shall be those set out in the Order Confirmation. It is the Buyer’s responsibility to check that the quantity, description and specification of the Goods appearing on the Order Confirmation complies with the terms of the Buyer’s order.

3 DELIVERY

3.1 Any dates given for the delivery of the Goods are approximate only and the Vendor shall not be liable for any loss, direct or indirect, which may arise from delay in delivery of Goods howsoever caused. Delivery shall be subject to a delivery charge. Time for delivery shall not be of the essence.

3.2 The Goods may be delivered in instalments. Each delivery shall constitute a separate contract and failure by the Vendor to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as repudiated.

3.3 Any periods or times stated for delivery or for compliance with any other contractual obligation on the Vendor’s part (“Estimated Times”) are estimates only. The Vendor shall not be responsible for

loss or damage resulting from delay or failure to notify the Buyer of any delay. Changed specifications or instructions may result in changes to Estimated Times.

4 PRICE

4.1 All prices are quoted subject to acceptance within any period specified and to any increase which may occur as a result of factors falling outside the control of the Vendor.

4.2 VAT and any other duties or taxes where applicable will be added to all invoices at the rate ruling at the date of despatch.

4.3 Tenders are made at current prices on an ex-works basis and are exclusive of the costs of packaging, carriage, insurance and unloading. A Tender may be withdrawn at any time prior to acceptance of an order and shall automatically be taken to have lapsed 30 days from date of the Tender.

5 CANCELLATION AND RE-SCHEDULING

5.1 No order which has been accepted by the Vendor may be cancelled or re-scheduled by the Buyer except with the prior agreement in writing of the Vendor (which shall normally involve a cancellation charge) and the Buyer shall indemnify the Vendor in full against all loss, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Vendor as a result of cancellation. The Vendor reserves the right to charge a re-stocking administration fee for unused purchases, such a fee to be in the range of 5% to 50% and will be decided on a case by case basis.

5.2 The Vendor may cancel the Contract with the Buyer by giving written notice in the event that:-

5.2.1 any invoice for the sale of the Vendor's Goods is overdue for payment;

5.2.2 the manufacturer of the Goods advises the Vendor of an increase in the price of the Goods; or

5.2.3 for reasons beyond the control of the Vendor it is unable to effect delivery following the manufacturer's termination of the Goods or there is an insufficient supply of Goods from the manufacturer.

5.3 On the giving notice of cancellation under clause 5.2, the Vendor shall repay to the Buyer any sums paid in respect of the price of the Goods. The Vendor shall not be liable for any loss or damage arising from such cancellation.

6 RETURN OF GOODS AND RETURNS PROCEDURE

6.1 If any Goods are or become faulty or defective in accordance with the provisions of Clause 11 of these Conditions, the Buyer must obtain an RMA (Returns Material Authorisation) number from the Vendor. The RMA number will be valid for a period of 21 days from the date of issue by the Vendor. The Vendor reserves the right to refuse to take delivery of any Goods after this period. Any Goods returned must have the RMA number marked clearly on the outside of the package. The Vendor reserves the right to refuse to take delivery of any Goods returned without an RMA number. All Goods are returned to the Vendor at the Buyers sole risk.

6.2 The Buyer must ensure Goods are returned in original packaging complete with all cables, manuals, and disks/CD's; failure to comply will render the warranty void.

6.3 If the Buyer wishes to return any Goods purchased in error or incompatible for the intended use, the Vendor reserves the right to either refuse the returns or charge a re-stocking fee. The re-stocking fee will be between 5% and 50% and the exact fee will be decided by the Vendor on a case by case basis.

6.4 The Buyer shall not be entitled to return Goods, which are not in accordance with the Contract. In no event shall the Buyer be entitled to return Goods on the basis of any defect or failure, which is so slight that it would be unreasonable, in the Vendor's opinion, for the Buyer to return the Goods.

6.5 Any Goods returned to the Vendor without a valid RMA number will not be accepted by the Vendor and will be returned to the Buyer freight collect. The Vendor shall specifically not accept the Goods unless it includes the original packaging.

6.6 Subject to clause 11 of these Conditions, the liability of the Vendor is strictly limited to the replacement, repair or credit to the invoiced value of the defective Goods, at the discretion of the Vendor.

7 PAYMENT AND INTEREST

7.1 The Vendor reserves the right to require payment in full for the Goods at the time of order, or payment in full before the Vendor agrees to despatch the Goods. The Vendor may or may not provide a credit account to the Buyer. If the Buyer has a credit account with the Vendor, payment will be strictly due 30 days from date of invoice (the "Invoice Date"). In the event that the invoice is not paid by the Buyer within 30 days from the end of the month following the Invoice Date then the Vendor shall be entitled to charge interest on late payments from the Invoice Date at a rate equivalent to the rate prevailing at the Invoice Date as prescribed by the Secretary of State pursuant to section 6 of The Late Payment of Commercial Debts (Interest) Act 1998. The Vendor reserves the right, at the Vendor's discretion, to refuse to establish a credit account for any Buyer, to refuse credit to any Buyer notwithstanding that a credit account may already have been established, and to withdraw credit account facilities without prejudice to the Vendor's rights.

7.2 If the Buyer has a credit account with the Vendor, the credit limit as determined from time to time by the Vendor shall not be exceeded without the prior written consent of the Vendor's authorised representative. Credit facilities may be withdrawn at any time at the discretion of the Vendor.

7.3 Unless otherwise agreed in writing, any credit account outstanding beyond agreed payment terms will be passed to a debt recovery agency and will be subject to a surcharge of twenty pounds to cover the cost incurred; such overdue accounts will also be subject to any other costs incurred in obtaining settlement.

8 RETENTION OF TITLE AND RISK

8.1 The risk in the goods shall pass to the Buyer on despatch of the Goods. At that moment, the Buyer shall become responsible for the care and protection of the Goods and shall take out at its own expense adequate and comprehensive all risks cover on the Goods (with a note of the Vendor's interest endorsed therein until the Vendor has received payment of the price in full).

8.2 Notwithstanding delivery and the passing of risk in the Goods, title in the Goods (including full legal and beneficial ownership) shall not pass to the Buyer until the Vendor has received payment in full for all Goods supplied by the Vendor to the Buyer under all contracts between them. Payment of the full price for the Goods shall include the amount of any interest or other sums payable under contracts between the Vendor and the Buyer.

8.3 Until such time as title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Vendor's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Vendor's property. Until title has passed in the Goods, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but the Buyer shall account to the Vendor for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

8.4 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Vendor shall be entitled at any time to require the Buyer to deliver up the Goods to the Vendor and, if the Buyer fails to do so forthwith, to enter any premises or vehicles of the Buyer or any third party where the Goods are stored and repossess the Goods. All additional costs incurred by these actions shall be borne by the Buyer.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for indebtedness any of the Goods which remain the property of the Vendor.

9 TERMINATION

9.1 The Vendor shall have the right to immediately terminate or suspend any further deliveries under the Contract or any other contract with the Buyer without any liability to the Buyer, and if the

Goods have been delivered but not paid for, the price of the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, if:

- 9.1.1 the Buyer fails to make any payment when due or breaches any provision of the Contract;
- 9.1.2 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm becomes bankrupt or (being a company goes into liquidation; or an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business or the Vendor reasonably apprehends that any of these events is about to occur in relation to the Buyer.

9.2 The right of termination given by Clause 9.1 shall be without prejudice to any other right or remedy of either party in respect of any breach committed under the terms of this Agreement.

10 DEFAULT

The Buyer shall fully and effectively indemnify the Vendor against the total expense to the Vendor arising out of the Buyer's breach or breach of the Contract. Such expense shall include (without limitation) all expenses incurred by the Vendor in sourcing and building the goods (iii all court fees (iii) all amounts payable to the Vendor's professional advisers (payable on an indemnity basis) in pursuing claims against the Buyer for breach or breaches of the Contract and for enforcing any judgement/s and/or order/s (iv) all amounts payable to the Vendor's insurers and/or debt recovery agents, in each case including anticipated sums payable by the Vendor only after payment of any sums from the Buyer.

11 GUARANTEE

11.1 Subject to clause 11.2 and unless otherwise stated, all Goods carry a 24 month return to Vendor guarantee from invoice date ("Guarantee"). If any Goods are or become faulty or defective by reason only of the use of defective materials or workmanship during the period of the Guarantee, the Vendor will, at the Vendor's option, either replace or repair such Goods, provided that the Buyer shall have notified the Vendor in writing of the fault or defect in the Goods, and shall have returned the faulty or defective Goods to the Vendor for inspection in accordance with clause 6 of these conditions.

11.2 The Guarantee will not be valid if the Goods became defective due to wilful damage, negligence, abnormal working conditions, failure to follow the Vendor's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Vendor's prior written approval. The Vendor shall be under no liability to honour the Guarantee of any Goods (or any other warranty condition or guarantee) if the total price of the Goods has not been paid for by the Buyer by the due date for payment.

11.3 For parts, materials or equipment not manufactured by the Vendor, the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Vendor.

12 CLAIMS

12.1 The Vendor shall not be liable for any costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special, indirect or consequential loss, suffered by the Buyer in connection with the Contract. In any event, the Vendor's entire liability under each Contract for Goods shall be limited, in respect of all claims (connected or unconnected) to an amount equal to the price of the Goods under such Contract. The Vendor does not attempt to limit its liability under the Contract for personal injury or death caused by its negligence or the negligence of its employees or agents or fraud or fraudulent misrepresentation.

12.2 All warranties, conditions, representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

13 FORCE MAJEURE

The Vendor shall be entitled to cancel or rescind the Contract, and will not be liable for any loss or damage caused, if the performance of its obligations under the Contract is in any way adversely affected by any event whatsoever beyond the Vendor's control, including (but not limited to) the delays or default of any sub-contractor, war, strike, lock-out, trade disputes, flood, fire, riot, act of God,

pandemic, accident to plant or machinery, shortage of materials, shortage of labour, shortage of transport or shortage of fuel.

14 GENERAL

14.1 The Vendor may assign transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract. . The Buyer may not assign its rights and obligations.

14.2 The Buyer shall not rely upon any representations as to the goods or their fitness for any particular purpose unless the Vendor specifically agrees these in writing. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Vendor shall be subject to correction without any liability on the part of the Vendor.

14.3 No delay or failure by the Vendor in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Vendor of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Vendor shall be effective unless in writing.

14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

14.5 These Conditions, and the Vendor's Order Confirmation, constitute the entire agreement between the Vendor and the Buyer concerning the supply of the Goods and replace and supersede any prior arrangement, understanding, warranty or representation (other than any fraudulent misrepresentation).

14.6 The Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.