

**1 DEFINITIONS**

In these Conditions, the following terms shall have the following meanings:

*Purchaser* means the person(s) so described in the Order;

*Contract* means the contract for the sale and purchase of the goods and/or services described in the Order;

*Order* means the Purchaser's purchase order;

*Seller* means TDK-Lambda UK Limited

**2 GENERAL**

Any quotation, tender or Order acceptance made or given by the Seller and any Contract resulting therefrom shall be governed only by these Conditions. Orders based on quotations or tenders shall not be binding on the Seller until the Seller accepts such Orders and notifies the Purchaser in writing of such acceptance.

The giving of any delivery instruction, the acceptance of or payment for any products or any other act or conduct by the Purchaser after receipt of these Conditions which is consistent with the Purchaser's confirmation of the relevant transaction shall constitute unqualified acceptance by the Purchaser of the terms and conditions as specified herein.

2.1 Where the Purchaser or any other company which is a member of the group of companies the Purchaser is also a member of breaches any contract with Seller then Seller, at its option, may either:

2.1.1 Suspend this Contract until such breach has been remedied or,

2.1.2 Terminate this Contract forthwith;

and in either case sue for any damages and costs incurred by Seller arising as a result of such breach.

2.2 Unless previously agreed in writing by a director of Seller, no verbal, written or other addition hereto or variation or waiver of any term or condition hereof shall be effective.

2.3 Unless confirmed in writing by a director of Seller, in entering into the contract the Purchaser acknowledges that no reliance has been placed upon any representation not contained herein and waives any claim for breach of any such representations which are not so confirmed.

2.4 The Seller shall reserve the right to review any Contracts that have a duration of greater than 12 calendar months from the date of the Order. Should the Seller deem it necessary that a change is required this will be negotiated with the Purchaser. The Seller also reserves the right to suspend or cancel the Contract should failure to agree on a suitable contract amendment occur. The Seller shall not be liable for any subsequent loss or disruption to the Purchaser as a result of this action.

2.5 The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts within the United Kingdom.

2.6 Seller does not sell to consumers; the Purchaser warrants that it is (and enters any contracts as) a bona fide business, and that it is not a 'consumer' with the meaning on any applicable laws or regulations.

2.7 If any of these terms is held by any court or other competent authority to be wholly or partially void, invalid, or unenforceable such term shall be severed from the body of these terms, which will continue to be valid and enforceable to the fullest extent permitted by law.

**3 VALIDITY**

The seller's quotations are invitations to treat and are valid for thirty days from the date hereof and are subject to Seller's written confirmation of such acceptance. The right is reserved to withdraw any quotation within the said period of thirty days either verbally or in writing and no liability whatsoever shall be incurred by such withdrawal.

**4 PRICE**

4.1 Prices are quoted in sterling unless otherwise stated and are exclusive of sales tax (including but not exclusively VAT, TVA or MWST) and are based on raw materials and labour costs current at the date of Contract and if, before delivery of all the products, there occurs any increase in any way of such costs the Seller shall be entitled to increase the price payable in respect of products which have not been delivered to account for such variations.

4.2 The Seller shall also be entitled to increase such price in the event of the quoted price being incorrect due to any error or omissions on its part or on the part of its employees or agents. For the purposes of this sub-clause a quoted price is incorrect when the price quoted for the goods or services is less than the applicable price shown in the price list current at the date that the quotation was given or where the price quoted is, on the face of it, clearly too low.

**5 PASSING OF PROPERTY**

5.1 The property in the products shall remain with the Seller until the products have been delivered and the total price thereof and any other payments due to Seller from the Purchaser in respect thereof have been made. If payment of the total price or other sums is not made on the due date Seller shall have the right with or without prior notice at any time to retake possession of the whole or part of the products (and for that purpose to go upon any premises occupied by the Purchaser thereof) without prejudice to any of Seller's other remedies.

- 5.2 The Purchaser must not destroy, deface or obscure any identifying mark or modify the products supplied in any way without first obtaining authorisation from the Seller. Failure to comply with this requirement will render any warranty or approvals associated with the product void and the Seller's liability for the product will cease.

## **6 TRANSFER OF RISK AND INSURANCE**

The risk in the products shall pass to the Purchaser as follows:

- 6.1 Where products are to be delivered by the Seller or its carrier to an address in the United Kingdom designated for delivery thereof to the Purchaser, the risk will pass when the goods have been so delivered.
- 6.2 Where products are to be collected by the Purchaser, the risk will pass when the products have been loaded on to the transport of the purchaser, of his carrier or, if the Purchaser fails to collect the products within a period of fourteen days after Seller has given the Purchaser written notice that the products are ready for delivery and collection, risk will pass at the expiry of such period.
- 6.3 For shipments to destinations outside the U.K will be ex-works Seller's facility (INCOTERMS 2000).

## **7 INSTALMENTS AND PART DELIVERIES**

- 7.1 In the case of a Contract for delivery of products by instalments, EVERY INSTALMENT SHALL BE DEEMED TO BE THE SUBJECT MATTER OF A SEPARATE CONTRACT and, unless otherwise agreed in writing by Seller's authorised representative, failure in delivery of any one or more of the said instalments shall not, subject to the other provisions of these Conditions, entitle the Purchaser to treat such failure as a repudiation of the whole Contract.
- 7.2 Where an Order is in respect of a number of products (whether the same or different), Seller reserves the right to deliver all or any reasonable number thereof as soon as they are completed at Seller's works or (where the products are to be collected by the Purchaser) Seller shall notify the Purchaser that all or any reasonable number of the products are ready for collection, the Purchaser shall accept such deliveries or make such collections and honour all demands for payment in respect thereof in accordance with the terms of payment set out herein.

## **8 DAMAGE OR LOSS IN TRANSIT**

Where the transport of products to be delivered to the Purchaser is to be effected by the Seller or their carrier the products must be examined by the Purchaser on receipt and the Purchaser must notify Seller promptly (refer to sect.9.0) if such products are received in a damaged condition or they are not received on the due date for delivery thereof. The Purchaser will indemnify the Seller against any loss suffered by the Seller as a result of any such notification being received too late to enable the Seller to claim against carriers or insurers in respect thereof.

## **9 ACCEPTANCE OF GOODS**

Unless within ten calendar days from date of receipt (or such longer period as agreed in writing by Seller's authorised representative) the Seller is notified in writing to the contrary, products shall be deemed to have been accepted by the Purchaser.

## **10 PAYMENT**

The terms of payment (unless otherwise agreed in writing by a director of Seller) are:

Deliveries in United Kingdom: Payment in full in sterling within 30 days from date of invoice.

Export shipments : Net cash payable in full by irrevocable documentary letters of credit (providing for part shipment) opened by the Purchaser with a bank in London to be approved by the Seller and payable against delivery of the relevant bill of lading/airway bill in the Seller's favour covering the products. All prices quoted are the actual amounts payable to the Seller free of all deductions whatsoever and are ex-works.

### **10.1 Stipulations as to time of payments shall be deemed to be of the essence of the contract.**

- 10.2 If payment of the price or any part or instalment thereof is not made on the due date the Seller shall be entitled to charge interest on the outstanding amount at the rate of 2½% per calendar month on a daily basis (and any other costs incurred in relation to the recovery of any sums outstanding shall be for the Purchaser's account).
- 10.3 Default by the Purchaser in making any payment on the date thereof will entitle the Seller to refuse to make delivery of any further products (whether ordered under the same Contract as that under which the default was made or not) without thereby incurring any liability whatsoever to the Purchaser.
- 10.4 No deduction shall be made by the Purchaser in respect of any set off or counter claim howsoever arising.

## **11 DELIVERY**

Delivery shall be ex-works Seller's facility (INCOTERMS 2000).

- 11.1 The seller shall make every commercially reasonable endeavour to adhere to its delivery schedule. Such schedule is not, however, guaranteed or to be deemed to be of the essence of the Contract and the Seller shall in no case be liable for any delay in delivery or any losses resulting directly or indirectly therefrom resulting from any cause beyond its reasonable control and any delay in delivery shall not be sufficient cause for cancellation by the Purchaser.

- 11.2 Where no date has been specified for delivery of any products to the Purchaser, the Purchaser shall give the Seller all necessary instructions and authorities and generally make all necessary arrangements so that delivery may take place within 14 days after Seller has notified the Purchaser that the products are ready for delivery.
- 11.3 Without prejudice to any other right which Seller may have in respect thereof, if the Purchaser refuses or neglects to take delivery of any of the products on the date specified therefore, or when no date has been specified for delivery or, without fault on Seller's part delivery has not been made within 14 days after a notification to the Purchaser under conditions 7.1 or 11.2 above, the Purchaser shall pay Seller's reasonable charges for storage of the products in question, such charges to accrue either from the date upon which the Purchaser refuses or neglects to take delivery or from the date of notification under the said condition 7.1 or 11.2 whichever shall be the case.
- 11.4 If in any event the Purchaser unreasonably refuses or neglects to take delivery of any of the products within twenty-eight days of either the date upon which delivery is tendered by Seller or of the date of notification under conditions 7.1 or 11.2 above, the Seller reserves the right to sell the products elsewhere and to claim from the Purchaser any costs, losses or damages which have been incurred by the seller directly or indirectly as a result of the Purchaser's refusal or neglect to take delivery.
- 11.5 Time (other than for payment) shall not be of the essence unless expressly made so by notice in writing.

## **12 CANCELLATION AND INSOLVENCY**

- 12.1 If there is any default or breach of any of the Purchaser's obligations hereunder or if any distress, execution or other legal process shall be levied upon or issued out against the Purchaser's property or if the Purchaser shall make or offer to make any arrangement of compositions with its creditors or commit any act of resolution or petition to wind up the Purchaser shall be passed or presented, or if a receiver of all or any of each and every such case SELLER SHALL HAVE THE RIGHT AT ANY TIME TO SUSPEND OR DETERMINE THE CONTRACT OR ANY UNFULFILLED PART THEREOF AND TO CANCEL ANY OUTSTANDING DELIVERY AND TO STOP ANY PRODUCTS IN TRANSIT AND, NOTWITHSTANDING ANY OTHER PROVISIONS, PAYMENT IN RESPECT OF ANY DELIVERY ALREADY MADE SHALL BE IMMEDIATELY DUE.
- 12.2 The Purchaser shall not cancel an order which has been accepted by the Seller without the written agreement of Seller's authorised representative and if such agreement is given the Purchaser shall pay to such a sum as Seller shall consider reasonable in respect of work done and materials supplied or ordered.

## **13 FORCE MAJEURE**

All reasonable efforts will be made to carry out the Contract but if Seller is prevented (directly or indirectly) from making delivery of the products or performing or completing any of its obligations hereunder by reason of acts of God, war, strikes, trade disputes, or other industrial action, fires, droughts, floods, explosions, breakdowns, interruption of transport, refusal of licence, Government or administrative action, delays in delivery to Seller or increase in the price of any goods or materials, any statute rule regulation order requisition recommendation or directive of any Government agency or other authority or any other body of competent judicial authority, or any other cause whatsoever, (whether or not of the like nature to those specified above) which shall reasonably be considered to be outside its control, Seller shall be under no liability whatsoever to the Purchaser, and shall be entitled at Seller's option (to be notified to the Purchaser in writing by Seller's authorised representative) either to cancel the contract (whereupon Seller shall be relieved of all liabilities hereunder) or to extend the time of its performance by such period (not limited to the length of delay) as the Seller may reasonably require to complete the performance of its obligations herein before referred to.

## **14 WARRANTY**

- 14.1 Unless an authorised representative of the Seller shall have otherwise agreed in writing with the Purchaser, Seller will at its option either repair or replace without charge for delivery ex-factory unpacked any part or parts of the product which are shown to Seller's satisfaction to be or which have become defective (other than as a result of fair wear and tear) within the applicable product warranty period (and if no warranty period is defined the warranty period shall be twelve calendar months from the date on which the original product shall first have been despatched from Seller's warehouse) and which are carefully packed and returned at the Purchaser's expense, provided that notice of such defects and satisfactory proof thereof is given by the Purchaser promptly after discovery and provided further that the defect is not due in whole or in part to mistreatment, lack of or improper maintenance or failure to observe any operating instruction issued by Seller in connection therewith. Goods will only be accepted for return if the Purchaser has returned goods via the Seller's Returns Material Authorisation (RMA) system.
- 14.2 Certain products may be sold with a Limited Lifetime Warranty. Only products that are expressly designated and sold by Seller as covered by the Limited Lifetime Warranty will be so covered. Such products will have an extended warranty that is defined as the period ending five (5) years after Seller discontinues manufacturing the product (as determined by Seller), but the warranty period shall be at least ten (10) years from the date of sale by Seller or an authorised distributor to the original end-user. Excluded from this Limited Lifetime Warranty are fans, blowers or other air moving devices or assemblies forming part of the covered products. The Limited Lifetime Warranty applies only to the original end-user purchaser and is not transferable. Neither Seller's standard warranty nor the Limited Lifetime Warranty shall apply to any product that has been modified or misused, or repaired by Purchaser, other end-user, or by any third party.

THIS WARRANTY IS IN PLACE OF AND EXCLUDES TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, UNDER COMMON LAW, EXPRESS OR IMPLIED. THE SELLER'S LIABILITIES AND THE PURCHASER'S REMEDIES IN RESPECT OF DEFECTS IN THE PRODUCTS AND ANY DAMAGE TO THE PRODUCTS RESULTING THEREFROM WHETHER ARISING FROM BREACH OF CONTRACT, STATUTORY DUTY, WARRANTY, NEGLIGENCE OR OTHERWISE ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS SELLER'S WARRANTY CLAUSE, AND THE SELLER SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY SUCH DEFECTS OR DAMAGES WHICH APPEAR AFTER THE EXPIRY OF THE WARRANTY PERIOD DESCRIBED ABOVE.

14.3 Save as in this condition herein before expressed and except in those cases where any absolute prohibition against exclusion or restriction of liability shall from time to time apply SELLER SHALL NOT BE UNDER ANY LIABILITY WHATSOEVER HOWSOEVER ARISING (INCLUDING WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING LIABILITY WHETHER FOUNDED IN COMMON LAW OR STATUTE) IN RESPECT OF OR IN CONNECTION WITH:

14.3.1 Any defect in the products, which should reasonably have been discovered by the Purchaser on inspection or test prior to acceptance.

14.3.2 Any loss or injury or damage arising in connection with the products including, without prejudice to the generality of the foregoing, any loss of profit or other consequential loss of any description in connection with the products or any work done in connection therewith.

The PURCHASER is advised to obtain appropriate insurance cover to protect itself against such risks for which the Seller's liability is excluded or limited.

14.4 Should the PURCHASER wish Seller to assume a greater liability in respect of the products, Seller will be pleased to discuss the terms (including payment) upon which such greater liability will be assumed but STRICTLY ON THE BASIS THAT SUCH GREATER LIABILITY SHALL BE AGREED IN WRITING WITH SELLER'S AUTHORISED REPRESENTATIVE before the Contract in respect of the products is entered into.

14.5 Warranty is only provided to the purchaser and is not transferable unless otherwise previously agreed in writing by Seller's authorised representative.

14.6 The warranty provided is on the basis of 'return to base' only. Should other services be required, these may be undertaken at cost to the purchaser. Warranty claims based on defects attributable to unauthorised modifications or repair work carried out by the Purchaser or third parties and the consequences thereof are invalid. Any such modifications or repair work will also invalidate all product safety approvals.

## 15 SUITABILITY

The Purchaser assumes responsibility that products subject to an Order are sufficient and suitable for its purposes and save insofar as specific mention thereof is made in any quotation or offer the Purchaser shall not rely upon Seller's skill or judgement as to whether the products are fit for any particular purpose or as to the manner in which the products shall be used, irrespective of any advice which may have been given by Seller or its employees or agents in good faith.

## 16 PERFORMANCE AND DRAWINGS, ETC

16.1 All specifications, illustrations, drawings, particulars, dimensions, plans and performance and other criteria are intended merely to present a general idea of the products described and unless otherwise specifically agreed in writing by Seller's authorised representative do not constitute a warranty or representation that any products purchased will conform to any specification, illustrations, drawings, particulars, dimensions or criteria.

16.2 Seller reserves the right to incorporate changes in the design, construction and composition, materials, arrangement or equipment of the products as it shall think fit without notifying the Purchaser and to supply products which may not be in strict accordance with the agreed specification so long as any such change shall not materially alter the advertised or stated performance or quality of the product.

## 17 ERRORS AND OMISSIONS

Whilst the Seller makes every effort to ensure all prices and descriptions quoted by it are precise and accurate, on occasions where an error may occur, the Seller is entitled to rescind any Contract, notwithstanding that it may have already accepted the Purchaser's Order. The Seller's liability will then be limited to the return of any money the Purchaser has paid relating to that Order.

## 18 LIMITATION OF LIABILITY

18.1 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by Section 12 of the Sale of Goods Act 1979 but subject always to the provisions of Section 14) are, to the fullest extent permitted by law, excluded from the contract.

18.2 Nothing in these conditions exclude or limit the liability of the Seller for fraudulent misrepresentation or for any death or personal injury caused by the Seller's negligence or any statutory rights, which are not permitted to be excluded by law.

THE PURCHASER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THOSE CONDITIONS CONTAINED IN SECTION 18.3

18.3 Subject to conditions 18.1 and 18.2, the Seller will not be liable to the Purchaser in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any:

18.3.1 economic loss of any kind (including but not limited to loss of use, profit, anticipated profit, business, contracts, overhead recovery, machining costs, revenue or anticipated savings);

18.3.2 any damage to the Purchaser's reputation or goodwill;

18.3.3 any product recall or business interruption costs;

18.3.4 any loss arising from any downtime of the Seller's information technology systems; or

18.3.5 any other special, indirect or consequential loss or damage, or loss of profits (even if the Seller has been advised of such loss or damage) arising out of or in connection with the contract.

18.4 Subject to the provisions of conditions 18.3.1, 18.3.2 and 18.3.4, the Seller's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising out of or in connection with this Contract will be limited to the Contract price.

18.5 The provisions of these conditions (section 18) shall survive the termination or expiry (for whatever reason) of this Contract.

18.6 The prices charged for the goods or service are based strictly on the understanding of acceptance by the Purchaser of the provisions in the Contract for the limitation of the Seller's liability. Should the Purchaser require the Seller to accept additional liability this may be discussed between the parties and the price increased accordingly.