

# TERMS & CONDITIONS OF SALE



## 1. Definitions

In these Conditions the following items shall have the following meanings:

**"the contract"** shall mean an official document issued and duly authorised by the Company and headed **"Order Acknowledgement"**.

**"the Company"** shall mean Pascall Electronics Limited.

**"the Purchaser"** shall mean the person or persons or firm or company to whom the "Order Acknowledgement" is sent.

**"the goods"** shall mean the goods described in the "Order Acknowledgement".

**"these Conditions"** shall mean the terms and condition contained herein.

## 2. Contract

These Conditions and the terms of the contract are the only terms upon which the Company is prepared to do business with the Purchaser. Unless expressly agreed in writing by the Company any conditions of the Purchaser shall not apply. These Conditions shall form part of every contract made between the Company and the Purchaser. All orders are accepted and executed by the Company on the understanding that the Purchaser is bound by these Conditions which shall constitute a binding contract except where specifically varied in writing by the parties.

## 3. Prices

The prices quoted are net and are exclusive of VAT, which must be added at the rate or rates applicable at the time of despatch. Unless withdrawn, tenders and quotations are open for acceptance within the period stated or, when no period is stated, within 30 days only after the date of such tender or quotation. The prices quoted are not necessarily applicable to quantities other than those offered. Unless prices are quoted as 'delivered', postage and packing charges are applicable at the Purchaser's cost.

## 4. Delivery and Charges

The time of delivery of the goods shall not be of the essence of the contract. Every endeavour will be made to maintain quoted delivery dates but all statements or terms regarding delivery dates or rates of delivery are estimates only and shall not impose any contractual obligation upon the Company. The Company shall not be liable to the Purchaser in respect of any loss of whatsoever nature and whatsoever arising suffered by the Purchaser as a result of the Company's failure to despatch the goods within any delivery time limit quoted. Estimated times quoted for despatch shall date from receipt by the company of written orders to proceed and of such further information if any, as will enable the Company to put an order in hand. Goods quoted ex-stock at the time of an enquiry are subject to prior sale and delivery dates quoted may be affected thereby. The Company shall have the right to suspend delivery and also at its discretion, to terminate the contract in respect of any undelivered goods if the Purchaser defaults in payment. The risk in all goods supplied under the contract shall pass to the Purchaser upon delivery to the Purchaser. An appropriate charge will be levied on all orders, the amount being stated at time of quotation. The method of delivery will be at the discretion of the Company. Special delivery arrangements at the request of the Purchaser may entail additional carriage charges.

## 5. Amendments

Orders may only be modified after prior negotiation and agreement, in writing, by the Company and the Purchaser. Thirty days notice is required to effect any changes to any agreed schedule, which shall not normally extend beyond 12 months.

## 6. Terms of Payments

6.1. Unless otherwise specified in the contract, the goods, or in cases where the goods are to be delivered by instalments, each instalment shall be **paid for in cash by the last day of the month following the month in which delivery was made**.

6.2. Notwithstanding any agreed terms of payment, the goods are not sold or delivered on credit, but on conditions that the ownership of the goods shall remain with the Company and no property in the goods whether legal or equitable shall pass from the Company until payment in full of:

- (i) All sums due from the Purchaser to the Company under this contract in respect of the goods, and
- (ii) All other sums due from the Purchaser to the Company on any account whatsoever.

6.3. If such payment as aforesaid is overdue in whole or in part the Company may (without prejudice to any of its other rights) recover and/or resell the goods in respect of which

ownership is reserved as aforesaid or any of them and may enter upon the Purchaser's premises by its servants or agents for that purpose.

6.4. If any of the goods are incorporated in or used as material for other goods so as to be practically irrecoverable ("the New Goods"), the ownership in the whole of the New Goods shall be and remain with the Company and the Purchaser in proportion to the respective values of the goods and items other than the goods (if any) which shall have been incorporated in or used as material for the New Goods until such payment has been made or the New Goods have been sold as aforesaid.

6.5. Until the Company is paid in full the sums referred to in Clause 6.2 above, the relationship of the Purchaser to the Company shall be fiduciary in respect of the goods and/or the new Goods. If the same are sold by the Purchaser, the Company shall have the right to trace the proceeds thereof. A like right for The Company shall apply where the Purchaser uses the goods and/or the New Goods in any way so as to be entitled to payment from a third party.

## 7. Claims

In the event of a total or partial loss or damage in transit the Purchaser shall give immediate notice both to the Carrier and the Company in writing setting out full details of the nature of the claim. Claims for shortages shall be notified to the Company within 7 days of delivery or receipt of the goods, whichever is the later. The Company's liability in respect of goods lost or damaged in transit is limited to replacement or repair. In default of notice of any claim being duly given, the Purchaser shall be deemed to have accepted the goods as delivered.

## 8. Warranty

8.1 The goods are subject to the guarantee ("the Guarantee") if any submitted by the Company in writing to the Purchaser which has been agreed as appropriate and fair.

8.2 Save as referred to in Condition 8.1 above the Company warrants only ("the Warranty") that the goods are reasonably free from defects in design (other than a design submitted or specified by the Purchaser) in material or workmanship for twelve months from the date of delivery ("the Warranty Period") provided always that in respect of goods, materials, parts or components supplied but not manufactured by the Company the Warranty will be equivalent to the warranty (if any) which the Company has received from the manufacturer or supplier of such goods, materials, parts or components but not so as to impose a liability greater than that imposed on the Company by the aforesaid Warranty and provided that the Purchaser has given the Company written notice and satisfactory proof of any defect promptly upon discovery of such defect but in no case later than seven days after expiry of the Warranty Period.

8.3 The Company's obligations to the Purchaser under the Warranty shall not apply:

8.3.1 to damage caused by the Purchaser's or any third party's act, default or misuse of the goods or by failure to follow any instructions supplied with the goods;

8.3.2 if the goods have been stored, handled or applied in such a way that damage is likely to occur;

8.3.3 if the goods are altered, modified or repaired in any place other than the Company's factory or by persons not expressly nominated or approved in writing by the Company;

8.3.4 if the Buyer shall not have paid by the due date for payment for all goods supplied whether under the Contract or under any other contract between the Company and the Purchaser;

8.3.5 in respect of any defect in the goods arising from any drawing, design or specification supplied by the Purchaser.

8.4 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.5 Subject to Condition 8.2 above, the Company shall at its sole option repair or replace the goods or refund the purchase price for the goods found to be defective in design materials or workmanship.

8.6 Save for liability for death or personal injury arising from the Company's negligence and for liability arising under the Consumer Protection Act 1987 (which if proved is not excluded) the Company's liability in respect of any loss or damage sustained by the Purchaser whether caused by any breach of the Company, its employees or agents or arising from any other cause whatsoever shall be limited to the value of the goods and the Company shall not be liable for any consequential, economic, direct or indirect loss, including but not limited to, loss of profits suffered by the Purchaser arising therefrom.

8.7 The cost to the Company of and incidental to return by the Purchaser to the Company of any of the goods delivered hereunder shall, except to the extent that the Company has accepted responsibility hereunder, be the responsibility of the Purchaser who shall indemnify the Company against any such costs including, but without limitation to the generality of the foregoing, costs of transport and testing or any other cost or loss to the Company arising therefrom.

8.8 Notwithstanding Condition 8.5 above the Purchaser shall, except where he is a person who suffers personal injury or death or loss or damage to property such as to give rise to a claim under the Consumer Protection Act 1987, indemnify the Company against all loss, damage, liability, legal fees and costs arising from any such claim made against the Company under the Consumer Protection Act 1987.

8.9 In the event that a competent court of law considers the limitation of liability provisions set out in this clause 8 to be unreasonable, the Company further limits its liability at five times the purchase price of the goods.

## 9. Cancellation and returns

No purchase order may be cancelled without the Company's acceptance and agreement in writing. Upon cancellation of any order for goods being made to the Purchaser's express requirements after manufacture thereof has commenced or for goods specially produced on the Purchaser's behalf, a reasonable Cancellation charge shall be payable by the Purchaser, such cancellation charge shall include the value of all work commenced on behalf of the purchaser, all costs incurred by the Company pursuant to receipt of the order being the subject of the contract and a reasonable administration fee for costs connected with the cancellation. Further, in no circumstances may goods correctly supplied against official order be returned without the Purchaser having first applied for and obtained the written consent of the Company. Defects in quality shall not be a ground for cancellation of the remainder of the contract nor ground for delay in payment in respect of goods which have already been delivered.

## 10. Overdue Accounts

The Company shall be entitled to charge interest at the rate of 3% over Barclays Bank plc Base Rate at date on any of the Purchaser's overdue accounts and to suspend deliveries of goods under any contract that the Purchaser has entered in to with the Company. Further if any overdue account remains unpaid for 7 days from the date for payment under these Conditions the company shall be entitled (having made a demand for payment) to cancel this or any other contracts made between the purchaser and the Company without prejudice to any other rights the Company may have under this contract in respect of the goods or non-payment.

## 11. Breach by or insolvency of the Purchaser

11.1 For the purpose of this clause the Events are:

11.1.1 the giving of any notice to the Purchaser that a receiver, manager, administrative receiver, supervisor, nominee, administrator or other similar person is to be or has been appointed over any of the property or assets of the Purchaser or that a petition to wind up the Purchaser is to be or has been presented or that an application for an administration order is to be or has been made or of any notice of a resolution to wind up the Purchaser (save for the purpose of a bona fide reconstruction or amalgamation);

11.1.2 a decision by the purchaser that the purchaser intends to make any arrangement or composition with its creditors generally;

11.1.3 where the Purchaser pursuant to section 123 or 268 of the insolvency Act 1986 appears to be unable to pay its debts or appears to have no reasonable prospect of being able to pay its debts;

11.1.4 any distress or execution is levied or is threatened to be levied on any property or assets of the Purchaser; and

11.1.5 the inability of the Purchaser to pay its debts as they fall due.

11.2 If the Purchaser shall not comply with any of its obligations to the Company or upon the occurrence of any of the Events referred to in clause 11.1, the Company shall have the right forthwith to terminate the Contract but without affecting any other claim, right or remedy of the Company against the Purchaser.

## 12. Export Sales

12.1 In respect of sales of the Goods outside the United Kingdom ("Export Sales") the provisions of these Conditions shall apply unless inconsistent with the terms of this clause.

12.2 Unless otherwise specifically agreed in writing between the Company and the Purchaser all Export Sales shall be made FCA (in accordance with INCOTERMS 2000)

12.3 Unless otherwise agreed in writing payment shall be made by confirmed, irrevocable letter of credit drawn in England on a United Kingdom Clearing Bank and Licensed Deposit taker in the United Kingdom on presentation of the bills of lading.

12.4 The Purchaser warrants that if an import licence or permit is required for the importation of the goods into the country of destination then such import licence or permit has been obtained or will be obtained prior to shipment.

## 13. Intellectual Property

The Purchaser shall indemnify the Company against all damage, loss, costs, claims and expenses arising out of any infringement of any letters, patents, registered or unregistered, designs trade marks, trade names, copyrights or other intellectual property rights or any claim for such infringement or any claim for passing off arising out of work carried out in accordance with the Purchaser's specifications.

## 14. Right to Sub-Contract/Assignment

14.1 The Company shall be entitled to sub-contract the whole or any part of its obligations under the Contract without the Purchaser's consent.

14.2 The Company shall be entitled to assign or otherwise transfer the whole or any part of the Contract or any of the Company's rights and obligations hereunder (including without limitation, any debt or indebtedness owed by the Purchaser to the Company) whether in whole or in part without the consent of the Purchaser.

## 15. Severance

Should any one or more of these Conditions or sub-conditions thereof be found to be or become invalid, illegal or unenforceable in any respect under any law the enforceability and validity of the remaining Conditions and sub-conditions shall not in any way be affected or impaired thereby.

## 16. Waiver

No waiver by the Company of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.

## 17. Third Party Rights

Nothing in this Contract shall confer or purport to confer on any third party (which is not a party to this Contract) any benefit or right to enforce any term of it.

## 18. Force Majeure

The Company shall have the right to cancel, suspend or delay delivery or to reduce the quantity to be delivered, if it is prevented from or hindered in or delayed in manufacturing or delivering by normal route or means of delivery, goods through any circumstances beyond its control including but not limited to strikes, lockouts, accidents, war, fire, reductions in or non-availability of power at manufacturing plants, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources or routes of supply.

## 19. Health & Safety at Work Act

The attention of the Purchaser is drawn to the provisions of the Health and Safety at Work Act 1974. The Company will make available upon reasonable request, information on the design, construction and use of its products to ensure that as far as is reasonably practicable they be safe and without risk to health when properly used.

## 20. Governing Law and Jurisdiction

These conditions of sale shall be constructed in accordance with laws of England and if any question, dispute or difference shall arise between the parties in respect of their interpretation, the same shall be submitted to the non-exclusive jurisdiction of the English Courts.