

Terms & Conditions of Sale

The Buyer's attention is drawn in particular to the provisions of clause 8.

1. Interpretation

1.1 In these Conditions

'BUYER' means the person who accepts a quotation of the Seller for the sale of the Goods or the supply of the Services or whose order for the Goods and/or Services is accepted by the Seller

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

'CONTRACT' means the contract for the purchase and sale of the Goods and/or the Services

'ELTHERINGTON GROUP' means Eltherington Group Limited (company number 00648546), Eltherington Industries Limited (company number 04544592), and Eltherington Aluminium Limited (Company Number 04544043) of which their registered office is situated at 9-11 Dansom Lane Kingston upon Hull HU8 7LA

'GOODS' means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions

'SELLER' means the company within the Eltherington Group which the Buyer has entered into or proposes to enter into a Contract with.

'SERVICES' means any services supplied by the Seller or by a third party on behalf of the Seller to the Buyer which form the subject of a Contract

'SPECIFICATION' includes any plans drawings data or other information relating to the Goods and/or Services

'TECHNICAL INFORMATION' means all know-how experience drawings designs circuit diagrams computer programs and all other technical information relating to the Goods or the Services and which might reasonably be of commercial interest to the Buyer in the design manufacture or supply of the Goods or in the operation of the Buyer

'WARRANTY PERIOD' means the period of 12 months or as agreed between the Buyer and the Seller in writing

'WRITING' includes telex, cable, facsimile transmission, electronic communication and any other comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods and the Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 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 Seller shall be subject to correction without any liability on the part of the Seller.

2.6 By placing an order on the Seller's website and clicking on the 'submit' or any similar button, the Buyer shall be deemed to accept these terms, despite anything to the contrary stated in the Buyer's order.

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and the Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any Specification for the Goods and the Services shall be those set out in the Seller's quotation or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's Specification.

3.5 The Seller reserves the right to make any changes in the Specification of the Goods or Services which are required to conform with any applicable statutory or EC requirements or, where the Goods or Services are to be supplied to the Seller's Specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the goods

4.1 The price of the Goods and Services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order or where agreed in writing on a time and tool basis at fair market value. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or Specifications for the Goods or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods and Services on or at any time after delivery of the Goods or performance of the Services (as the case may be), unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods or wrongfully fails to allow the Buyer to perform the Services (as the case may be), in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods or (as the case may be) the Seller is ready to perform the Services.

5.2 The Buyer shall pay the price of the Goods and Services (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days after the last day of the month in which the Goods are delivered or the Services supplied, unless a variance to the payment terms has been agreed and shown on the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods or Services (or the goods or services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 1.5 per cent per month from due date until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). Such interest to be calculated on a compound basis on the amount outstanding on the 1st day of each month

6. Delivery/Performance

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods or performance of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or performance of the Services however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered and Services performed by the Seller in advance of the quoted delivery/performance date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 The Contract is divisible. The work performed in each month during the currency of the Contract shall be invoiced separately. Each invoice for work performed in any month shall be payable by the Buyer in full, in accordance with the terms of payment provided for in these Conditions, without reference to and notwithstanding any defect or default in the work performed or to be performed in any other month

6.5 If the Seller fails to deliver the Goods (or any installment) or perform the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods/services to replace those not delivered/performed over the price of the Goods/Services.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties so that they remain readily identifiable as

the Seller's property, keep the Goods properly stored, protected and insured against all risks for their full price from the date of delivery, and shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods, but shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored or reasonably thought to be stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

7.6 Any fixtures and fittings or other materials that require removal during installation of the Goods or performance of the Services will be disposed of by the Seller unless otherwise agreed in writing by the Seller and the Buyer. The Seller does not warrant that any materials so removed will be reusable.

8. Warranties and liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their Specification at the time of delivery and will be free from defects in material and workmanship for the Warranty Period which will commence on the date of their initial use or the date of delivery, whichever is the first to expire.

8.2 The Seller warrants to the Buyer that the Services will be performed by appropriate qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

8.3 The above warranties set out in sub-clauses 8.1 and 8.2 above are given by the Seller subject to the following conditions:

8.3.1 the Seller shall be under no liability in respect of any defect in the Goods or Services arising from any drawing, design or Specification supplied by the Buyer;

8.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.3.3 the Seller shall be under no liability under the above warranties (or any other warranty, condition or guarantee) if the total price for the Goods and the Services has not been paid by the due date for payment;

8.3.4 the above warranty at 8.1 does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.4 Subject as expressly provided in these Conditions, and except where the Goods are sold or Services supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.5 Where the Goods and Services are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 (as amended)) the statutory rights of the Buyer are not affected by these Conditions.

8.6 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or any defect in the Services or the failure of the Goods or Services to correspond with Specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery of the Goods or (as the case may be) completion of performance of the Services or

(where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.7 Where any valid claim in respect of any of the Goods or the Services which is based on any defect in the quality or condition of the Goods or performance of the Services or their failure to meet Specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods or Services (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.8 Except in respect of death or personal injury caused by the Seller's negligence, or for breaches of the terms implied by section 12 of the Sale of Goods Act 1979 or for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit, loss of business, loss of anticipated savings or third party claims in each case whether direct, indirect or consequential, or any claims for indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, or out of or in connection with the performance of the Services and the entire liability of the Seller under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the price of the Goods and Services, except as expressly provided in these Conditions. We strongly advise you to insure against all such potential losses, damage, expenses or liability which are excluded by this clause.

8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods or the Services, if the delay or failure was due to any cause beyond the Seller's reasonable control or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control or, if they could have been foreseen, were unavoidable::

8.9.1 Act of God, explosion, flood, tempest, fire, or accident;

8.9.2 war or threat of war, terrorism, sabotage, insurrection, civil disturbance or requisition;

8.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.9.4 import or export regulations or embargoes;

8.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.9.7 power failure or breakdown in machinery.

8.10 The Seller should be entitled to terminate this Contract when such Force Majeure Event renders performance impossible in the sole opinion of the Seller for a continuous period of 1 month. For the avoidance of doubt this should not release the Buyer from its obligations to pay the Seller all or any money then due to the Seller.

8.11 Unless specifically agreed in writing between the Seller and the Buyer the Seller shall have no obligation to enter into collateral warranties or any form of duty of care agreements with third parties in connection with the supply of the Goods and/or Services. Where the Seller agrees to give collateral warranties they will be in the Seller's standard form which is available for inspection by the

Buyer upon written request. The Buyer shall in addition to the price of the Goods and Services indemnify the Seller against all legal costs incurred in connection with the preparation and negotiation of any collateral warranties given by the Seller at the Buyer's request.

9. Indemnity

9.1 Where the Buyer has supplied the Seller with a Specification to which Goods or Services are supplied then the Buyer shall indemnify the Seller against all losses, claims, costs, damages and penalties incurred or suffered by the Seller as a result of the unauthorised use by the Seller of any patent, copyright, design, trademark or other industrial or intellectual property right of any other person in using the Specification in connection with the Goods or Services

10. Instructions for use

10.1 Where the Goods supplied require assembly by the Buyer the Buyer is advised to follow the assembly instructions supplied by the Seller. If the Buyer has difficulty in following such instructions or in assembling the Goods the Buyer should seek advice from the Seller. No liability will be accepted by the Seller for loss or damage arising from the Buyer failing to follow the instructions provided by the Seller

11. Insolvency of buyer

11.1 This clause applies if:

11.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. Health and Safety Legislation

12.1 Where the Seller is supplying goods and/or services to the Buyer on a construction site it shall be the duty of the Buyer to provide an appropriate safety policy and risk management assessment so as to ensure, so far as possible, the safety of the agents, servants, employees and sub-contractors of the Seller in the course of supplying the Goods and Services on the site.

12.2 The Buyer will ensure that the owners and occupiers of the site referred to in 12.1 above will (so far as it is not within the responsibility of the Buyer so to do) provide an appropriate safety policy and risk management assessment so as to ensure, so far as possible, the safety of the agents, servants, employees and sub-contractors of the Seller in the course of supplying the Goods and Services on the site.

12.3 The Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with any claim made against the Seller wholly or partly as a result of a breach by the Buyer of its obligations under sub-clause 12.1 and/or 12.2 above.

13. Confidentiality

13.1 The Buyer agrees to maintain secret and confidential all Technical Information obtained from the Seller pursuant to the Contract and prior to and in contemplation of it and all other information that it may acquire from the other in the course of the Contract to respect the Seller's proprietary rights therein to use the same exclusively for the purposes of the Contract and to disclose the same only to those of its employees and agents engaged pursuant to the Contract (if any) to whom and to the extent that such disclosure is reasonably necessary for the purpose of the Contract

13.2 The foregoing obligations of clause 13.1 above shall not apply to Technical Information or other information which:

13.2.1 the Buyer can prove by documentary evidence produced to the Seller within 28 days of disclosure to the Buyer that such Technical Information was already in the possession of the Buyer and at its free disposal;

13.2.2 is subsequently disclosed to the Buyer without any obligations of confidence by a third party who has not derived it directly or indirectly from the Seller;

13.2.3 is or becomes generally available to the public in printed publications in general circulation in the United Kingdom through no act or default of the Buyer or its agents or employees

13.3 Notwithstanding the foregoing provisions the Buyer shall be entitled to disclose Technical Information of the Seller to actual or potential customers for Goods in so far as such disclosure is reasonably necessary to promote the sale or use of Goods

13.4 The Buyer shall procure that all its employees and agents (if any) who have access to any information of the Seller to which the obligations of clause 13.1 apply shall be made aware of and subject to these obligations.

14. General

14.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

14.2 No waiver by the Seller 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.

14.3 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. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.4 If any dispute arises under or in connection with these Conditions or the sale of the Goods or provision of the Services:

14.4.1 the Buyer and the Seller will attempt in good faith to resolve any such dispute or claim promptly through negotiations between their respective senior executives who have authority to settle the same;

14.4.2 if the matter is not resolved through negotiation, the Buyer and the Seller will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the Buyer and the Seller by the Centre for Dispute Resolution;

14.4.3if the matter has not been resolved by an ADR procedure within 40 days of the initiation of such procedure, or if either party will not participate in an ADR procedure, the dispute shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society

14.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

14.6 The Buyer shall not assign or transfer or purport to have signed or transferred to any other person any of its rights or subcontract any of its obligations under the Contract

14.7 The Seller shall be entitled to assign or transfer or purport to have assigned or transferred any other person any of its rights or subcontract any of its obligations under the Contract

14.8 The Seller may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other company in the Eltherington Group, provided that any act or omission of any such other company shall be deemed to be the act or omission of the Seller and the Buyer shall have no right to make any claim over any other company in the Eltherington Group.