

# Terms & Conditions of Sale

## 1 GENERAL

All orders are accepted and goods supplied subject to our quotations and the following terms and conditions. These conditions may not be modified or varied unless Whistler Technology plc (or any of its subsidiaries) (hereinafter referred to as "the Company") agrees to this in writing and only then with an endorsed signature of a director of the Company. The Contracts of Sale will be on the conditions contained herein and the customer will be taken to have waived the special purchase conditions, if any, on their purchase order.

## 2 AVAILABILITY/STORAGE

The Company shall use its best endeavours to deliver by the date specified, but shall be under no liability whatsoever for delay or consequence thereof, however caused. When delivery is delayed for reasons attributed to the Purchaser or its Agents, storage and any other additional costs will be charged to the Purchaser. The goods will be at the Purchaser's risk from the date of commencement of such delay. The original delivery date shall be the date of commencement of the guarantee and Whistler Technology plc may invoice the price on the original delivery date.

## 3 CHANGE OF PRODUCT SPECIFICATIONS

The customer indemnifies the Company and any of its subsidiaries against discontinuing any product or making design changes which they believe are necessary.

## 4 PRICES

All prices quoted are strictly net unless otherwise quoted. Whilst every endeavour will be made to maintain the prices quoted, the Company maintains the right to change price without prior notice. This will include the right to change prices without prior notice in order to cover the following:

- Currency fluctuations, which increase the cost to the Company of materials or goods.
- Extra costs incurred as a result of cancellation, alteration, and postponement or rescheduling of orders.
- Delivery will be FOB UK and goods will be packed to the Company's normal specification in non-returnable packing.
- Carriage will be arranged at the Purchaser's request and expense.
- Release documentation and Certificates of conformity for goods supplied from bonded stock will normally be provided free of charge.
- The Company reserves the right to deliver in more than one consignment and to invoice each consignment separately.
- Purchasers outside of the UK are responsible at their own expense, for obtaining any import licence required in the country of destination.
- The Company is responsible for seeking any necessary licence to export the goods from the UK, unless the Purchaser's office issuing the order is located in the UK.

## 5 TECHNICAL ADVICE

No liability shall result from goods that have been used by the customer in any way at variance with the manufacturer's instructions. It is the responsibility of the customer to ensure that the manufacturer's specifications are adhered to. THIS INCLUDES without limitation moisture sensitive devices which are purchased without a sealed original manufacturer dry pack and must be correctly dried prior to use. Please refer to the manufacturer's guidelines for the required bake time and temperature. Failure to observe this precaution will invalidate any warranty offered by the Company. Any technical advice or service given by the Company, shall not amount to a warranty as to fitness for any purpose, other than in accordance with the manufacturer's specifications. It is the buyer's/customer's responsibility to ensure prior to purchasing any product from the Company that they have undertaken all necessary due diligence and satisfied themselves that the goods are fit for their intended purpose and/or meet their required specifications.

## 6 SCHEDULED DELIVERY/LONG DELIVERY DATES

If your order is for scheduled deliveries or is for "long" delivery dates (i.e. in excess of 6 weeks after order confirmation is provided by us), then this clause shall apply. You will be notified in our Order confirmation accordingly. Orders can only be accepted for scheduled/long delivery where the line value of each shipment is economically viable. Customers placing orders with the Company must accept delivery of the total order within one year of the date of the order (unless otherwise stated in the order confirmation). In the event of the customer wishing to suspend deliveries, the Company requires thirty days notice in writing to this effect. Such a suspension will be to a maximum period of 60 days, after such, deliveries will be resumed at the normal rate. Customers may not cancel a scheduled/long delivery or part thereof unless as set out below. In this respect the agreement to supply goods to you will be Non-cancellable and Non Refundable "NCNR". However, the may at the Company may at its sole and absolute discretion allow you to cancel any scheduled/long delivery but may invoice you up to 30% of the cost of the goods or services involved. Alternatively the Company may refuse to accept any cancellation, or request of deferment, or suspension of delivery, or deliveries made by the Customer, in respect of non stock items purchased specifically to fulfil a customer's order under this clause.

You may cancel the Scheduled/Long delivery only in any one of the following circumstances provided always that the Company is notified in writing of the proposed cancellation within 30 days following delivery to you by the Company, :-

- if date codes received are worse than those place on your purchase order ("PO")
- the part number(s) is different from the part number(s) on your PO,
- your PO state "new" parts and the parts delivered are used/refurbished,
- the quantity available is significantly less than the amount ordered by you,
- the parts are damaged (i.e. bent or broken leads) photographic evidence of the parts and labels is required by the Company in this regard,
- the parts ordered by you fail testing (acceptable independent tests results will be required) or the parts ordered by you failed in their application but should not have failed in that application (again, acceptable independent test reports are required),
- Parts may not be returned after 30 days have elapsed after delivery to you under any circumstances unless on of the above reasons applies and the Company has been notified in writing within that time that your intention to return the goods concerned.

In addition the following terms shall also apply to an NCNR purchase; -

- The Company shall not issue any refund or credit until a RMA has been approved and the goods have been returned,
- Any re-shipment of goods arising from your refusal to accept the same when delivery is attempted shall be subject to a re-shipping fee of 10% of the invoice value of the goods concerned
- The Company reserves its right to test or re-test any parts returned to it as faulty to check the validity of your own test report. If the parts pass those tests then no refund or credit shall be provided.
- The parts shipped to you will be "Invisi-marked" in order to ensure that any parts returned are the same parts that were delivered to you by the Company. If parts are returned that were not supplied by the Company a 20% handling fee of the order value in question shall be applied.
- Only full test reports delivered by 1<sup>st</sup> Class post in their original formats are acceptable to the Company
- You must send the Company photographs of any broken or bent leads so as to enable comparison with the company's own photographs before any refund/credit can be considered
- All "NET 1" orders are to be paid within 24 hours of delivery by the Company. If NET1 is not received within 24 hours of delivery any RMA issues will be void.

## 7 PAYMENT TERMS & RETENTION OF TITLE

Cheques and Bank Drafts should be made out as payable to Whistler Technology plc. Only where expressly agreed, payments for sales shall be net 30 days end of month following the date of the invoice, these terms will be subject to the receipt of satisfactory references. All other payments shall be by Telegraphic Transfer in advance or Bank Draft or other mutually agreed terms. Time of payment is of the essence of this contract or any subsequent contracts entered into under these terms. If you fail to pay any invoice when it falls due and there are other later transactions between us under these terms then, at the Company's sole and absolute discretions, any agreed credit terms for any subsequent contract may be disregarded by the Company should any step be undertaken to

recover any outstanding amount due to us (i.e. all credit terms will be revoked and the full balance will become due at that time). If the Customer fails to make any payment due to the Company under this agreement by the due date for payment (in accordance with our payment terms of 30 days from the end of month of invoice), then the Customer shall pay interest on the overdue amount in accordance with the Late Payments of Commercial Debts Act 1998 (as amended). Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. The Supplier reserves the right to refer any overdue amount to a third party agency or firm for collection and to add all and any costs associated with such referral to the overdue amount. This clause shall not apply to payments that the Customer disputes in good faith. Additional costs of collection of any outstanding balances may also be charged pursuant to the scale of compensation charges allowed under the Late Payment of Commercial Debts (Interest) Act 1998 for each qualifying transaction as an individual item.

Until such time as any of the delivered goods are paid the ownership of goods shall remain vested in the Company and will only be transferred to the customer when payment for the goods has been received in full. Until payment as aforesaid, the relationship of Bailor and Bailee shall subsist between the parties. Until the date of payment, the customer is required to store the goods in such a way that they can clearly be identified as the property of the Company. Nevertheless, the Customer shall be entitled to sell the goods, either in their original state or incorporated into other products, as agents for the Company. In these circumstances, the title to the goods shall remain with the Company and the customer shall remain fully accountable for the proceeds of sale thereof, which must any event, be kept by the customer separate from all other monies. The Company is granted the right to enter into the Customers premises to recover any goods not yet paid for or paid for only in part, which shall be kept separate from all other in the Customer's possession.

## 8. SHORTAGES

Shortages must be notified both to the Company and the delivery carrier where applicable, within 48 hours of receipt of the goods, or in cases of non-delivery, as soon as reasonably possible, but not later than 7 days after receipt of Account Statement showing the delivery. No responsibility for non-delivery or delivery shortages can be accepted by the Company after expiry of these times and the customer shall be liable for payment for the goods in default of compliance with this clause.

## 9. RETURNS/ORDER CANCELLATIONS

Once goods are ordered the order may not be cancelled without incurring cancellation fees if the Company has committed to purchasing the goods for the customers use. Ordered and delivered goods may only be returned to the Company with the consent of a director of the same. Goods returned or Orders cancelled prior to delivery by the Company as "Not Wanted", "Incorrectly Ordered" or "Duplicated Orders" or any other reason resulting from "Confirmation of Order", not being endorsed to that effect, will be subject to a 20% charge of the total value of the goods returned or order cancelled. In any event, not less than an amount equal to our processing cost. Any goods that have been approved by the Company for return must be received within 14 days of the approval. Any goods approved for return MUST be returned in their original condition which, for the avoidance of doubt, includes the original packaging. Failure to comply with any of these conditions will invalidate the return, unless later authorised in writing by a director of the Company. Goods should not be retained for handing to our representative at the time of their next visit, whenever that might be. Non-stock items, special price deals and items purchased specifically to a Customer's requirements will not be subject to credit or exchange under any circumstances whatsoever (whether delivered by the Company to the Customer or not).

## 10. GUARANTEES AND WARRANTIES

The Company guarantees that subject to the conditions in clause 11, we will replace goods sold or refund the purchase price for a period of 30 days from the date of dispatch, but only for any items with defects caused by faulty materials or workmanship.

## 11. REMEDIES AND DAMAGES

The Company shall not incur any liability under the above warranty, outlined in clause 10 unless it is promptly notified in writing upon discovery by the customer that such goods do not conform to specification, and the appropriate invoice number and date of purchase is supplied. Once an RMA number has been issued the alleged defective goods are to be returned to the Company, carriage prepaid within 14 days. Examination by the Company or its appointed officer of the goods shall be undertaken to confirm whether the alleged defect exists and has not been caused by misuse, neglect, method of storage, faulty installation, handling, testing or repair, or by alteration or accident. The Company's liability shall be limited to replacing the goods or issuing credits, at its option, for any goods returned within 30 days of the date of dispatch. The Company shall not be liable for incidental or consequential damages for non-compliance with the requirements set out above including, but not limited to, the costs of removal and reinstallation of goods, loss of goodwill, loss of profits of use. If these requirements are not complied with, our guarantee shall not apply and we shall be discharged from all liability arising from the supply of defective goods.

## 12. COUNTRY OF ORIGIN

Unless otherwise confirmed, nothing in our publications is to be taken as a representation of the source of origin, or manufacture, or production of the goods and part thereof.

## 13. QUOTATIONS

Quotations are dated and are valid for thirty days from that date, unless otherwise stated.

## 14. PATENTS AND COPYRIGHT

Products offered for sale by the company may be the subject of patents or other such protective devices.

## 15. CONFIDENTIALITY

Both the Company and the Customer shall each keep confidentiality and shall not without the prior consent, in writing of the other, disclose to any third party, any technical or commercial information, which it has acquired from the other as a result of discussions, or negotiations and other communications between them relating to the goods and the order.

## 16. DESCRIPTION OF GOODS

All specifications, drawings and particulars of weights, dimensions, capacity or other details provided by the Company are intended to give a general idea of the goods, but will not form part of the contract. If the description of any Goods, in any correspondence, leaflet, invoice or catalogue varies from that of the manufacturer's description, the manufacturer's description shall be deemed to be the correct description and shall take precedence over the description provided by the Company. The manufacturer's description is available (this may exclude obsolete parts) from the Company on request and it is the customer's responsibility to ensure that they have a copy of this prior to placing any order. Goods will be supplied to the manufacturer's specification and finish, as were in force at the time of manufacture and date of initial distribution or later distribution, may apply. The description of the Goods by the Company has been given by way of identification only and the use of such description shall not constitute a sale by description. The Company can only advise on RoHS compliance based on information given to us by our supplier, and is not liable or responsible whatsoever for any parts that do not conform to this legislation. The Company will use reasonable endeavours, to ensure the accuracy of technical data or literature relating to the goods in question, but the Company accepts no liability in contract, including negligence, or breach of statutory duty, or otherwise for any damage or injury arising directly or indirectly, from any error or omission in such technical data or literature.

## 17. LIMITATION OF LIABILITY

Goods sold by the Company are not authorised to be used in life support equipment or for applications in which the failure or malfunction of the goods would create a situation in which personal injury or death could occur. Any such use or sale of goods by the Company is at the sole risk of Buyer/customer. In no event is the Company liable to the Buyer or any third party for any liability, claims, obligations, damages, costs, or expenses, including without limitation, any direct, indirect, special, incidental, or consequential damages (including lost profits, business losses, personal property damage, personal injury, and death) arising out of or relating to the sale of goods by Whistler Technology plc to the Buyer. The Buyer assumes full liability for, all personal injury and whistler damage connected with the handling, transportation, possession, processing, repackaging, further manufacture, or other use or resale of goods, whether the goods are used along or in combination with any other material.

## 18. FORCE MAJEURE

The Company shall have no liability in respect of failure, or delay in delivery, or in performance, of any obligations under the contract, due to any cause outside of the control of the Company.

**19 EXPORT CONTROL REGULATIONS**

The Company shall in no circumstances be liable for any damage, or loss, or claim however occasioned by an act or omission on the part of the Purchaser, in contravention of any regulations issued by the United States Government concerning the export of goods, services or technology. Any goods supplied by the Company, whose re-export at the time of sale by the Purchaser is known and restricted by any aforementioned regulations. The goods shall not be exported to the Purchaser, without prior approval of the relevant authorities, concerned with the administration of such regulations. The Company will not accept or process any orders for goods and associated services, that are directly or indirectly destined for countries, where a NATO, UN or EU embargo is in force for such product categories.

**20 TERMINATION**

If the Purchaser commits any breach of the Terms and Conditions of Sale, (as detailed herein), or suffers distress or execution or becomes insolvent or commits an act of bankruptcy, or enters into any arrangement or composition with his creditors, or goes or is put into liquidation (other than solely for amalgamation, or reconstruction while solvent) or if a receiver, or administrator is appointed over any part of the Purchasers business, the Company may without prejudice to any other rights which may have accrued, or which may accrue, terminate any contract which may be in force, summarily without giving any notice thereof.

**21 EXPORT BUSINESS**

These Terms and Conditions of Sale do apply to all Export Transactions.

**22 LAW**

All questions relating to any quotations or contracts of sale, subject to these conditions or agreed amendments to these conditions shall be determined in all respects by the Laws of England and the parties irrevocably submit to the jurisdiction of the English Courts.