

# Advertised Conditions of Sale

(This contract is subject to the law of England and Wales)

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1 Definitions: In these conditions, unless the context requires otherwise:

1.1 'Buyer' means the person who buys or agrees to buy the goods from the Seller;

1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;

1.3 'Delivery Date' means the date specified by the Seller when the goods are to be delivered;

1.4 'Goods' means the articles which the Buyer agrees to buy from the Seller;

1.5 'Partly Manufactured Goods' means materials with which the Goods are to be manufactured or goods partly assembled using those materials.

1.6 'Price' means the price for the Goods excluding carriage, packing, insurance and VAT;

1.7 'Seller' means Advance Technical Systems Limited, T/A Advance Welding, Units 1 and 2 Taylor Street, Cleckheaton, West Yorkshire BD19 5DZ, United Kingdom.

2 Conditions applicable

2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.

2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

2.5 Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.

2.6 No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future.

2.9 The Seller may licence or sub-contract all or any part of its rights and obligations under this contract without the Buyer's consent.

2.10 The Buyer shall not assign his rights and interest in this contract without the prior written consent of the Seller.

3 Price and payment

3.1 The Price shall be the Seller's quoted price. The Price is exclusive of VAT, which shall be due at the rate ruling on the date of the Seller's invoice.

3.2 Payment of the Price and VAT shall be due within 30 days of the date of the

invoice. Time for payment shall be of the essence.

3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 4% above Royal Bank of Scotland's plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.

3.4 The Buyer may not withhold payment on any invoice or other amount due to the Seller by reason of any right of set off or counterclaim, which the Buyer may have or allege to have, or for any reason whatsoever.

3.5 In the event that the Buyer declines to accept the Goods in breach of this contract the Buyer shall pay to the Seller as and by way of agreed liquidated damages an amount equal to the price of the Goods less the net proceeds received by the Seller on reselling the Goods after deducting the costs and expenses of resale.

3.6 In the event that the Buyer in breach of this contract terminates before all or part of the Goods have been manufactured then the Buyer shall pay to the Seller by way of liquidated Damages an amount equal to the full price of the Goods less the net proceeds received by the Seller on selling the Partly Manufactured Goods after deducting the costs and expenses of sale.

#### 4 The Goods

4.1 The quantity and description of the Goods shall be as set out in the Seller's original quotation.

#### 5 Intellectual Property

5.1 All purchasing information, including relevant ad-hoc specifications (where applicable and not excluded by prior-art or as an existing feature foreseen and used by the Seller) provided by the Buyer to the Seller shall remain the exclusive property of the Buyer and shall not be disclosed by the Seller to any third party without the Buyer's written consent.

5.2 The Seller shall not use the Buyer's property referred to in clause 5.1 above nor allow it to be used for any purpose other than the supply of Goods in accordance with this contract.

5.3 All specifications, designs, patterns, drawings, photographs, samples and information provided by the Seller to the Buyer (the Material) shall remain the exclusive property of the Seller and shall not be disclosed by the Buyer to any third party without the Seller's written consent.

5.4 All intellectual property rights in Goods designed by the Seller at the explicit request of the Buyer, including all copyright works by way of example only, software, preparatory design materials and prototypes, databases, manuals, publications, drawings, diagrams and circuit diagrams shall remain the property of the Seller and the benefit of such rights shall not be transferred by the Buyer to a third party until the Seller has received payment for the Goods.

5.5 The Seller shall not be liable if the Material is modified in any way by any person other than the Seller whether or not by or with the consent of the Seller, or used for any purpose other than that for which it was designed and prepared for, or used for

any unauthorised purpose.

## 6 Warranties and liability

6.1 The Seller warrants that the Goods supplied will at the time of delivery correspond to the description given by the Seller. All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.

## 7 Delivery of the Goods

7.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date, or as befits the Seller's production arrangements foreseen or otherwise at the time of contractual agreements to actively commit to that date. The Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Buyer. The Buyer shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.

7.2 The Seller may deliver the Goods by separate instalments. The Seller may raise a separate invoice and require payment for each instalment.

7.3 The failure or refusal of the Seller to deliver or the failure or refusal of the Buyer to take delivery or to pay for any one or more of the said instalments on the due dates shall not be deemed to constitute or to manifest an intention to abandon the contract in any respect and shall not entitle either party to treat the contract as repudiated.

7.4 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

7.5 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the Delivery Date.

7.6 The Goods shall be delivered to the Buyer at the Seller's address. The risk in the Goods shall pass to the Buyer upon such delivery taking place.

7.7 The Seller shall arrange for carriage of the Goods to the Buyer's address. The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer without any set-off or other withholding whatever and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent

## 8 Acceptance of the Goods

8.1 The Buyer shall be deemed to have accepted the Goods 7 days after delivery to the Buyer.

8.2 Notwithstanding the Sale of Goods Act 1979 Section 35A(1), acceptance of some of the Goods by the Buyer, whether conforming to the contract or not, shall deprive the Buyer of the right to reject the rest of the Goods, whether they conform to the contract or not.

8.3 If the Buyer properly rejects any of the Goods which are not in accordance with

the contract the Buyer shall nonetheless pay the full Price for such Goods unless the Buyer promptly gives notice of rejection to the Seller and at the Buyer's cost returns such Goods to the Seller before the date when payment of the Price is due.

8.4 No Goods delivered to the Buyer which are in accordance with the contract will be accepted for return without the prior written approval of the Seller on terms to be determined at the absolute discretion of the Seller.

8.5 If the Seller agrees to accept any such Goods for return the Buyer shall be liable to pay a handling charge of 25% of the invoice price. Such Goods must be returned by the Buyer carriage-paid to the Seller in their original shipping carton.

8.6 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.

## 9 Remedies of Buyer

9.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.

9.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.

9.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.

9.4 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.

9.5 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

## 10 Payment and Termination

10.1 If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:

10.2 Suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or

10.3 Exercise any of its rights pursuant to clauses 3 and 11 herein.

## 11 Seller's retention of property

11.1 The Goods shall be at the Buyer's risk as from delivery.

11.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until:

11.2.1 The Buyer shall have paid the Price plus VAT in full; and

11.2.2 No other sums whatever shall be due from the Buyer to the Seller.

11.3 Until property in the Goods passes to the Buyer in accordance with clause 11.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

11.4 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.

11.5 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 11.4 shall cease.

11.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

11.7 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

## 12 Third Party Rights

12.1 The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to this contract shall have no right under that Act to enforce any term of the contract.

## 13 Force majeure

13.1 Save for the Buyer's obligation of payment under clause 3 neither party shall be liable for any default due to any act of God, war, civil disturbance, malicious damage, strike, lockout, industrial action, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond the reasonable control of either party ('Force Majeure Event').

13.2 Each party shall give notice forthwith to the other upon becoming aware of a Force Majeure Event, the notice to specify details of the circumstances giving rise to the Force Majeure Event.

#### 14 Seller's cancellation clause

14.1 The Seller may cancel this contract at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

#### 15 Notices

15.1 Any notice under or in connection with this contract of sale shall be in writing and shall be served by first class post or by hand on the party or sent by recorded delivery or e-mail at or to the address of the party set out in this contract or at or to such other address as may be subsequently notified by one party to the other.

15.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:

15.2.1 if delivered personally when left at the address in clause 15.1;

15.2.2 if sent by recorded delivery 3 days after posting; and

15.2.3 if sent by e-mail, when received.