

HAMLIN ELECTRONICS EUROPE LTD

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these conditions "Hamlin" means Hamlin Electronics Europe Limited; the "goods" means any item of whatsoever nature which is to be sold by Hamlin; "Customer" means the person who buys or who has agreed to buy the goods; the expression "Ex-Works", "FOB", "DDU", "DDP" and "CIF" shall have the meanings given them by the "Incoterms" of the International Chamber of Commerce save when such meanings are inconsistent with the terms hereof; the expression "export contract" means a contract for sale of goods where the goods are consigned by Hamlin outside the United Kingdom, the expression "liability whatsoever" shall include, without prejudice to the generality of the expression, liability in tort and in contract, including liability for consequential loss (including loss of profit) or damage of any kind howsoever caused or arising; "UCTA" means the Unfair Contract Terms Act 1979 (as amended); "agreed specifications" means such specifications relating to the goods as may be agreed in writing by Hamlin with the Customer.

2. GENERAL

These conditions shall apply to every sale made or agreed to be made by Hamlin and no variation or abrogation of the same shall be effective (whether contained in any document emanating from the Customer or made orally by any person acting or purporting to act on behalf of the Customer or Hamlin) unless such change or abrogation is evidenced in writing signed on behalf of Hamlin and such evidence contains a specific reference to the conditions being varied or abrogated. No contract governed by these conditions shall be a sale by sample unless Hamlin expressly so agrees in writing.

3. QUOTATIONS

Any quotation issued by Hamlin does not constitute an offer but merely an invitation to treat and Hamlin shall in no event be bound until it has confirmed a Customer's order on the Hamlin official acknowledgement of order form. The Customer's order must be in writing and accompanied by such information as may be necessary to enable Hamlin to proceed forthwith. Oral arrangements shall not bind Hamlin unless they are confirmed by Hamlin in writing. Quotations are given on the basis that the terms quoted will remain open for the placing of orders (subject to acceptance by Hamlin) for 30 days from the day thereof (unless otherwise specified). Quotations are, in any event, subject to availability of goods and materials specified therein and Hamlin shall have the right where necessary to substitute other goods or materials of similar or equivalent nature (such that the published specifications will be substantially met) and to vary the contract price accordingly.

4. SPECIFICATIONS, DRAWINGS AND CATALOGUES

(A) All specifications, illustrations, diagrams, drawings and particulars of dimensions and weight in Hamlin's catalogues, price lists, advertisements, trade literature and other published matter are of a generally informative nature and approximate only and none of these shall constitute descriptions of goods or be terms of any Contract or give rise to any independent or collateral liability of whatsoever nature on the part of Hamlin and, without prejudice to the generality of the foregoing, the Company shall be under no liability whatsoever for inaccuracies in weights or dimensions quoted by Hamlin.

(B) The Customer agrees that he is not relying on any representative made by Hamlin, its agents, or employees and that the entire terms of the contract of sale are expressed in these conditions.

5. PRICE

(A) Unless otherwise stated the price quoted for the goods will be as follows:-

(1) Where delivery is to be made within the United Kingdom prices will be ex-works, inclusive of basic packaging but exclusive of all insurance, special packaging, freight and all other costs, charges and expenses of any kind whatsoever including, without prejudice to the generality of the foregoing, any value added tax;

(2) In the case of export contracts prices will be FOB such U.K. port or airport as Hamlin may deem convenient and inclusive of the cost of basic packaging.

(B) Hamlin shall be entitled to make such extra charge as may be reasonable to cover the cost of freight, insurance and all other costs and expenses incurred by Hamlin under or in connection with the contract of sale. The Customer shall in addition pay to Hamlin an amount equivalent to the value added tax, if any, chargeable in respect of the contract.

(C) Hamlin shall be entitled to adjust the price of the goods, before or after the contract is made and before or after delivery of the goods, in the event of any variation, howsoever arising, in the cost to Hamlin of manufacturing and/or supplying the goods including (without prejudice to the generality of the foregoing) increases in costs of materials, wages and salaries, freight or insurance charges, changes in exchange rates or duty, changes in the requirements of the customer accepted by Hamlin and any delay whether or not caused by the servants or agents of Hamlin.

(D) Hamlin shall be entitled to bring the action for the price adjustment whether or not the property in the goods has passed to the Customer.

6. DELIVERY

(A) Any time or date named or accepted by Hamlin for delivery of the goods is an estimate only and is not a condition of the contract and if Hamlin is prevented for any reason whatsoever from making delivery by such time or date, Hamlin shall be under no liability for the consequences of any delay in particular, but without prejudice to the generality of the foregoing, Hamlin shall be under no liability whatsoever for any delay caused directly or indirectly by reason of Act of God, war, strikes, lock-outs, walkouts, trade disputes, fires, breakdowns, mechanical failures, interruption of transport, Government action, delay in delivery to Hamlin of any goods or by any other cause, whether or not of the like nature to those specified above, beyond the control of Hamlin and in any such event Hamlin may, as its option, cancel the contract or extend the time for performance by it by such period as may be reasonable without any liability whatsoever on its part. Subject as in hereinafter provided time shall not be of the essence of the contract;

(B) any orders placed by the Customer shall be accompanied by instructions as to where the ordered goods should be delivered;

(C) unless otherwise agreed in writing Hamlin shall be entitled to determine the route and manner of delivery of the goods and shall, for the purpose of Section 32(2) Sales of Goods Act 1979, be deemed to have the Customer's authority to make such contract with any carrier as Hamlin may in its absolute discretion deem reasonable;

(D) notwithstanding any stipulated place of delivery, delivery of goods to a carrier for the purposes of transmission to the Customer shall be deemed to constitute delivery to the Customer;

(E) Unless otherwise stated in writing Hamlin should be entitled to make partial deliveries or deliveries by instalments and these conditions shall apply to each partial delivery. We reserve the right to deliver $\pm 10\%$ of the ordered quantity;

(F) each item separately priced on a quotation shall unless otherwise agreed in writing be deemed to be the subject of a separate contract, and accordingly the provisions relating to delivery and completion shall apply independently;

(G) in cases where Hamlin has not undertaken to despatch goods to the Customer, Hamlin will give to the Customer seven days' notice that the goods are ready for collection and will specify the place at which they may be collected, and delivery shall be deemed to take place there when the goods have been inspected by the Customer under the provisions of sub-clause (H) below or when the Customer or his carrier collects the goods, or at the close of business on the seventh day after the despatch of such notice, whichever is the earlier, provided that the Customer shall not be obliged to take delivery before any agreed delivery date;

(H) In cases where goods are to be collected by the Customer, if the Customer decides to inspect them, such inspection must be made within seven days of receipt of notice that the goods are ready for inspection at the place specified in such

notice. If, upon inspection, the goods are approved by, or on behalf of the Customer, such approval shall constitute a final acceptance.

7. PAYMENT

- (A) Unless otherwise agreed, payment of the price of the goods and all other sums due under or in connection with the contract of sale shall be made as follows:-
- (1) in the case of contracts which are not export contracts, in cash or by cheque within 30 days nett from date of invoice.
 - (2) In the case of export contracts, by way of irrevocable confirmed documentary credit, under which cash is payable against bills of lading or other appropriate documents of title specified in the credit, opened by the Customer and issued or confirmed by a bank in London to be approved by Hamlin, no goods being despatched until such letter of credit is issued or confirmed as aforesaid.
- (B) Time for payment shall be of the essence and if payment is not made when due in accordance with the sub-clause (A) of this Condition 7, Hamlin may treat the contract of sale as being repudiated by the Customer and, in addition, but without prejudice to such right, Hamlin shall be entitled to charge interest of any sums not paid on the due date for payment at the rate of 5% per annum above the base rate of National Westminster Bank PLC calculated from day to day until payment thereof is made.

8. PROPERTY AND RISK

- (A) Property in the goods shall remain in Hamlin until all sums due to Hamlin from the Customer have been paid in full.
- (B) Without prejudice to any of its other rights Hamlin may recover or resell goods supplied and its servants or agents may enter upon the Customer's premises for that purpose if any of the events referred to in clause 12 shall have occurred.
- (C) Until such time as the Customer becomes the owner of the goods it will store them on its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the goods of Hamlin.
- (D) the goods will be at the Customer's risk from the first point in time of the following events:-
- (1) the delivery to the Customer or the Customer's premises or to any premises designated by the Customer;
 - (2) deemed delivery within the terms of conditions 6(D) and (G); or
 - (3) the passing of the property in the goods to the Customer;
- and in the case of (1) or (2) notwithstanding any subsequent return or retaking of possessions of the goods by Hamlin.

9. LIEN

In addition to any lien to which Hamlin may otherwise be entitled, Hamlin shall, in the event of the Customer being insolvent or failing to pay the purchase price due under this agreement or any other contract with Hamlin, be entitled to a general lien over all and any goods of the Customer in the possession of Hamlin, its servants and agents (notwithstanding that all or some of such goods may have been paid for) for the unpaid purchase price of the goods or (as the case may be) other goods sold and delivered to the Customer by Hamlin under this agreement or any other agreement.

10. EXCLUSION OF LIABILITY

(A) INSPECTION OF GOODS

- (1) The Customer warrants:-
- (a) that they will carefully inspect all goods supplied by Hamlin and will notify Hamlin in writing of any defect or other failure to comply with the contract which is or ought to be apparent upon such inspection within seven days of their being collected by or delivered to them.
 - (b) that they will notify Hamlin in writing within seven days of becoming aware of any defect or other failure to comply with the contract which was not apparent on such examination and test as aforesaid.
- (2) In the event that the Customer establishes to Hamlin's reasonable satisfaction that the goods are not in accordance with the contract or are defective, Hamlin may elect to repair or to replace the goods or to refund the purchase price against return of the goods.
- (3) If Hamlin has arranged for the delivery of the goods on behalf of the Customer and the goods are lost or damaged in transit and in the event that the customer notifies Hamlin of such loss or damage two clear working days before notice is required to be given to the carrier of the loss or damage then Hamlin will, without undertaking any liability, notify the carrier on the Customer's behalf of the claim. The Customer shall immediately notify Hamlin if the goods are not received by the Customer within 10 days of the date of invoice.

(B) USE OF GOODS

Where any items comprised in the goods or materials have been purchased by the Customer:-

- (1) other than for the purpose of resale, the Customer shall bring to the attention of all persons using the same; or
- (2) where goods or materials are resold the Customer shall bring to the attention of the purchaser all of Hamlin's instructions and/or recommendations for use packed by Hamlin with the goods or referred to in Hamlin's catalogues or brochures or which Hamlin has otherwise notified to the Customer.

(C) DEFECTS AFTER DELIVERY

- (1) The following shall apply in contracts for the sale of goods which are not international supply contracts as defined by Section 26 of the Unfair Contract Terms Act 1977 ("UCTA").
- (a) Goods are supplied with the benefit where the same are applicable of the conditions and warranties implied by Section 12 of the Sales of Goods Act 1979.
 - (b) Goods to be supplied by Hamlin to the Customer hereunder shall conform in all respects with any agreed specification and subject to clause 10 (C)(1)(e) the Customer shall be entitled to reject any goods which are not in accordance with any agreed specifications.
 - (c) Save as aforesaid and save as herein expressly sets out the goods are not supplied with or subject to any condition warranty or other term whether express or implied unless specifically stated by Hamlin in writing.
 - (d) In no circumstances save for:-
 - (i) Any liability in relation to death or personal injury occasioned solely by the negligence of Hamlin or its employees; or
 - (ii) Any liability arising under Part 1 of the Consumer Protection Act (1987)shall any liability whatsoever of Hamlin to the Customer arising under or out of in conjunction with any contract for the supply of the goods exceed the cost to the Customer of replacing or repairing the said goods.
 - (e) Except in any case within Clause 10(C)(1)(a) above Hamlin shall not be under any liability for any costs or expenses incurred by the Customer in repairing or replacing the said goods unless Hamlin is first afforded a reasonable opportunity of replacing or repairing them provided that the Customer shall be entitled to effect such repairs or replacements before affording such an opportunity as may be reasonably necessary to prevent any consequential loss or damage to the Customer.
 - (f) Hamlin undertakes to repair or replace any defective goods supplied by it or at its option to allow credit up to the amount charged in respect of such parts provided that defects are notified to Hamlin in writing forthwith upon their discovery and within six months (or such other period of time as may be agreed in writing) of delivery of the goods in question and there has been due compliance by the Customer with these terms of business and (if Hamlin so requires) the defective goods are returned forthwith to Hamlin carriage paid.

- (g) The company will at the request and expense of the Customer use its best endeavour to give the Customer the benefit of any warranty guarantee or undertakings supplied by any manufacturer where goods have not been manufactured by Hamlin.
- (2) In the cases of international supply contracts as defined in Section 26 of the Sale of Goods Act 1979;
 - (a) All conditions, warranties and other terms express or implied statutory or otherwise are hereby expressly excluded save as contained herein or as otherwise expressly agreed by Hamlin in writing.
 - (b) In the case of a contract for the supply of goods Hamlin will remedy or replace any defective goods supplied or at its option allow credit up to the amount charged in respect of such goods provided that any defect is notified in writing forthwith upon discovery and within six months (or such other period as may be agreed in writing) of the supply of goods and provided that there has been compliance by the Customer with these terms of business and (if Hamlin so requires) that the defective goods are returned forthwith to Hamlin carriage paid.
 - (c) Hamlin will at the request and expense of the Customer use its best endeavours to give the Customer the benefit of warranty guarantee or undertaking supplied by a manufacturer not being Hamlin in relation to any goods.
 - (d) In no circumstances shall any liability whatsoever of Hamlin to the Customer arising under or out of or in connection with any contract for the supply of goods exceed the cost to the Customer of replacing or repairing the same.

(D) **INDEMNITY**

The Customer shall indemnify Hamlin in respect of all damage injury or loss occurring to any person or property against all actions, suits, claims, demands, charges or expenses in connection therewith arising from the condition or use of the goods in the event and to the extent that the damage injury or loss shall have been occasioned partly or wholly by the carelessness of the Customer or his servants or agents or by any breach by the Customer of its obligations or any warranties made to Hamlin hereunder.

11. INDUSTRIAL PROPERTY RIGHTS

- (A) If any order is carried out by Hamlin in accordance with any instructions or specifications received from the customer and such work results in the infringement of any copyright, trademark or patent rights, the Customer undertakes and agrees to indemnify Hamlin from and against all damages, costs and expense to which Hamlin may become liable as a result of carrying out any such work;
- (B) The copyright in all documents, specifications, blueprints and other material and all information furnished to the Customer for the purposes of or in connection with any quotation or contract shall at all times remain the property of and vested in Hamlin and no such material or information shall be used or communicated to any other person without Hamlin's written consent. All such documents and information supplied by Hamlin to the Customer are supplied on the express condition and they are and shall remain confidential and shall not be used, adapted or modified or used in any adapted or modified form by any person without the written consent of Hamlin;
- (C) All designs, moulds, dies, tools and other items of similar nature provided or used by Hamlin in connection with any order-quotation or contract and the copyright and all other rights therein shall remain the property of Hamlin which shall be entitled to re-use or dispose of the same in any manner, provided that if any tools are specifically manufactured to specifications required by or on the orders of the Customer the cost of such tools shall be borne by the Customer and the tools shall remain the property of the Customer.

12. BREACH AND CUSTOMER INSOLVENCY

If the Customer shall default in or commit any breach of these conditions or of any of his obligations to Hamlin or if any execution or distress shall be levied upon the customer's property or assets, or if the Customer shall enter into any negotiations for arrangement or composition with its creditors or commit any act of bankruptcy or if any petition in bankruptcy shall be presented against it or, if the Customer is a corporate body, any resolution is proposed or petition presented to wind up the Customer or if a receiver administration receiver or administrator of the Customer's assets or undertaking or any part thereof shall be appointed, Hamlin shall be entitled forthwith to determine any contract then subsisting with the Customer without prejudice to any other claim or right Hamlin might make or exercise.

13. EXPORT CONTRACTS

In the case of export contracts the payment of all import duties, charges and assessments and the obtaining of any necessary export and import licences in respect of the goods is the sole responsibility of the Customer and Hamlin shall be under no liability whatsoever in respect of goods exported without the necessary export/import licences.

14. NOTICES

Any notice to be given by Hamlin shall be deemed to be given upon its being posted by letter or sent by fax or e-mail to the Customer's registered office, or in the case of an individual or firm to the last known address.

15. ASSIGNMENT

The Customer shall not assign or transfer or purport to assign or transfer this contract to any other Company, individual or firm whatsoever without Hamlin's written consent.

16. PROPER LAW

This agreement shall be construed in accordance with and governed in all respects by English Law and Hamlin and the Customer agree to submit to the jurisdiction of the courts of England. In the case of export contracts, the Uniform Law on Sales as defined in the Uniform Laws on International Sales Act 1967 shall not apply.

17. HEADINGS

The headings in these conditions are for convenience only and shall have no effect on the interpretation thereof.