

# ULTRA ELECTRONICS CEMS (PORTCHESTER) STANDARD CONDITIONS OF SALE

## 1. Definitions

- 1.1. The following definitions shall have the following meanings within the context of these Standard Conditions of Sale:
- 1.2. "Ultra" – shall mean Ultra Electronics Limited, trading as Ultra Electronics CEMS which is a business name of Ultra Electronics Limited, registered in England, registered number 02830644. Registered office 35 Portman Square, London W1H 6LR, United Kingdom
- 1.3. "Customer" – shall mean the person or company identified on the Face of the Order.
- 1.4. "Quotation" – shall mean a formal offer by Ultra, made on Ultra's official letter headed paper to supply the Goods at the price(s) within a specified timescale and subject to these Standard Conditions of Sale.
- 1.5. "Order" – shall mean the formal requirement of the Customer, made on the Customer's official letter headed paper for the supply of Goods.
- 1.6. "Contract" – shall mean the contractual agreement between the Parties governing the supply of Goods and shall include these Standard Conditions of Sale.
- 1.7. "Goods" – shall mean the goods, equipment, services, works, and/or software to be supplied by Ultra to the Customer as identified under the terms of the Contract.
- 1.8. "Parties" – shall mean the Customer and Ultra, and "Party" shall mean either the Customer or Ultra depending on the context.
- 1.9. "Ultimate Customer" shall mean the ultimate recipient of the goods.
- 1.10. "Excess Stock" means stock purchased in excess of requirement due to minimum order quantities (MOQ)/minimum package quantities (MPQ) imposed by suppliers for components or components procured in economic order quantities as agreed between Ultra and the Customer, stock purchased to support a Customer's stated forecast requirements or stock made redundant by Customer redesign.

## 2. Obligation to Provide Goods

- 2.1. Ultra's Quotation is an offer to supply the Customer with Goods subject to these Standard Conditions of Sale. The Quotation shall remain valid for the period specified therein, however Ultra reserves the right to revise or withdraw the Quotation at any time prior to Ultra's acceptance of the Customer's Order.
- 2.2. Notwithstanding that Ultra may have given a detailed Quotation, no Order for the provision of Goods shall be binding on Ultra unless and until it has been explicitly accepted in writing by Ultra and formed a Contract between the Parties. Ultra shall not be under any obligation to supply the Goods in accordance with the Quotation until it has entered into a written Contract with the Customer.
- 2.3. A Contract with the Customer may only be cancelled or varied with Ultra's written consent. The granting of such consent shall not in any way prejudice Ultra's right to recover from the Customer full compensation for any loss or expense arising from such cancellation or variation.

## 3. Specifications

- 3.1. All descriptions, statements, drawings and specifications contained in brochures or other advertisement matter are intended to provide general information regarding the Goods described therein and Ultra will not be bound by any such descriptions, statements, drawings or specifications unless expressly stated in the Contract.
- 3.2. Ultra reserves the right to revise or amend the specification of the Goods at any time provided that any revisions or amendments do not impair the operation of the Goods or affect the price or the planned delivery date of the Goods.
- 3.3. The provision by Ultra of samples for analysis by the Customer, or the inspection of samples by the Customer shall not constitute a sale by description or sample.

## 4. Delivery of the Goods

- 4.1. The Delivery term of the Contract shall be FCA, PO16 9RD, Portchester, England (INCOTERMS 2020), unless otherwise specified in writing within the Contract.
- 4.2. Ultra shall supply the Customer with the Goods as specified in the Contract. Ultra shall take all reasonable steps to meet any delivery dates quoted but all such dates shall be estimates only and Ultra shall not be liable for failure to meet such delivery dates.
- 4.3. Unless otherwise agreed, prices include Ultra's standard inspection and works testing and suitable packaging in accordance with Ultra's standard practice for delivery within the United Kingdom which is non-returnable. Any additional testing, non-standard packaging requirements, delivery overseas or installation work may be arranged by Ultra if requested by the Customer, subject to the payment of additional charges which will be covered by a separate Quotation.
- 4.4. The Customer shall notify Ultra within five (5) days of delivery of any obvious damage or shortage otherwise delivery will be deemed to be complete.

## 5. Risk and Title

- 5.1. Risk in the Goods shall pass from Ultra to the Customer on delivery of the Goods in accordance with Clause 4 above.
- 5.2. Title in the Goods shall pass from Ultra to the Customer on payment for the Goods in accordance with Clause 6 below. Until full payment for the Goods has been made, the Customer shall ensure that the Goods are clearly marked as being Ultra's property.

## 6. Price and Terms of Payment

- 6.1. The Customer shall pay the price for the Goods as specified in the Contract. Payment for the Goods shall become due in the amounts and at the times specified within the Contract.
- 6.2. Excess Stock identified at quotation stage shall be added to the Contract and subsequently invoiced to the Customer if no follow on Contracts have been received to consume such stock. Actual values of Excess Stock would be agreed with the Customer prior to invoice being submitted. Excess Stock purchased by the Customer will be transferred to the Customer or disposed of as mutually agreed.
- 6.3. The Customer acknowledges that pricing and delivery schedules are based on forecast quantities given to Ultra at the time of quotation. Should the quantities ordered differ from the forecast quantities initially supplied, Ultra reserves the right to alter the price accordingly.
- 6.4. At the time of purchasing components for the Contract, should costs rise by more than 5% of the quoted value, Ultra reserve the right to charge the customer for the increased costs.
- 6.5. All Prices quoted shall be exclusive of Value Added Tax or any other similar tax or levy which may be payable thereon. Such taxes or levies will be added to Ultra's invoice, as appropriate, at the rate prescribed by current relevant legislation.
- 6.6. The Customer shall pay Ultra within the specified payment terms of the date of Ultra's invoice. Interest may be charged on sums overdue both before and after judgement at the rate of 2% per month calculated on a daily basis from the date payment was due until the date payment is received, such interest to be compounded monthly.
- 6.7. Order acceptance will be subject to the completion of independent credit checks and receipt of satisfactory credit references from the customer.

## 7. Warranty

- 7.1. Assuming good Design for Manufacture (DFM) has been followed by the Customer, Ultra warrants that for a period of 12 (twelve) calendar months from delivery of the Goods to the Customer the Goods will be free from manufacturing defects.
- 7.2. Ultra will at its own option and expense repair or replace all defective parts which under proper use, care and maintenance fail to function correctly provided that such failure:-
  - a) Is notified promptly to Ultra within the period specified above; and
  - b) Arises solely from defective workmanship; and
  - c) Occurs during normal use of the Goods having regard in particular to Ultra's and other agreed applicable specifications and instructions.
- 7.3. The Customer shall return the defective Goods at its own risk and expense to Ultra unless this is not possible due to installation limitations or Health and Safety restrictions whereon the Customer shall agree arrangements for Ultra staff to attend the location of the faulty Goods. Replaced defective Goods shall become the property of Ultra and replacement Goods shall become the property of the Customer. Replacement Goods will be delivered to the Customer at Ultra's risk and expense. All Goods replaced or repaired shall bear the balance of the original warranty period as shall remain from the date of repair or replacement of the Goods, however, in the case of a repair, only the repaired part shall be covered by the 12 months' warranty – not any other part of the Goods connected with its use.
- 7.4. Ultra accepts no liability in respect of the defects or failures which are caused by fair wear and tear, accident, neglect, installation or servicing by a Third Party other than a person or company approved by Ultra, use of the Goods other than in accordance with Ultra's and other agreed applicable specifications and instructions, in combination with equipment not supplied or approved by Ultra or for a purpose for which they were not intended, abnormal environmental conditions or additions to or modification of the Goods carried out without Ultra's prior written consent.
- 7.5. Ultra reserves the right to make a charge for work required for any of the reasons listed above or for the investigation of reported faults where no fault is found to exist.
- 7.6. In the case of Goods not manufactured by or on behalf of Ultra, the Customer shall be entitled to the benefit of any warranty offered by the manufacturer of such Goods only to the extent to which Ultra is able to transfer it to the Customer.
- 7.7. Where finished Goods are supplied after a visual/optical inspection only, Ultra expressly excludes any liability for any deficiency in functionality, correctness,

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- or completion, where such deficiency would not reasonably have been apparent during a visual/optical inspection.
- 7.8. This warranty constitutes the sole liability of Ultra with regard to the Goods. No other warranties express or implied, are made with respect to the Goods and Ultra expressly disclaims any warranty not stated herein.
- 8. Return of Goods**
- 8.1. The Customer may only return Goods to Ultra, and receive a credit or refund, on the following conditions:
- The Customer must contact Ultra and obtain the consent of Ultra.
  - Goods must be returned to Ultra in their original condition and packaging free from damage, such that the Goods will be immediately fit for resale.
- 9. Cancellations or Rescheduling**
- 9.1. The cancellation of any Contract must be given in writing by the Customer and is not operative until written confirmation of Ultra's acceptance thereof has been received by the Customer. Ultra reserves the right to refuse acceptance of any cancellation without assigning any reason.
- 9.2. Ultra's acceptance of Contract cancellation shall only be on the condition that the Customer indemnifies Ultra against all losses occasioned by Ultra because of such cancellation including, but not limited to, any loss of profit, finished Goods not delivered to or accepted by the Customer, work in progress Goods, non-cancellable/non-returnable parts either in stock or on order, sub-contract work being undertaken, excess stock.
- 9.3. In exceptional circumstances, CEMS may consider a request by the Customer to reschedule deliveries to a later date. No reschedule requests will be considered within 90 calendar days of the current delivery date for the Goods. If CEMS agree to reschedule dates, the revised dates shall not be in excess of 60 calendar days of the current delivery date and shall not extend beyond the end of CEMS financial year (December 23rd). The Customer acknowledges and agrees that the right to defer or reschedule an order will be subject to the scheduling flexibility of CEMS. Moreover, the Customer agrees that, in the event that the Customer request to reschedule an order as permitted by this Section is accepted by CEMS, the Customer shall be responsible for reimbursing any costs incurred by CEMS as a result of such rescheduling. Notwithstanding the foregoing, any Purchase Orders with scheduled delivery dates beyond the applicable lead time may be rescheduled by Customer at any time upon written notice to CEMS, provided that the rescheduled dates do not extend beyond the end of CEMS financial year (December 23rd) and that no costs shall be incurred by CEMS as a result of a accommodating Customer's request. If costs are incurred then Customer shall be liable for such costs.
- 10. Documentation**
- 10.1. The quantity, content and/or format of all documentation supplied to the Customer shall be that normally produced and supplied by Ultra under the prevailing Quality Management System unless specifically otherwise stated in writing within the Contract. This applies to all Ultra Electronics standard products and also when the scope of supply includes an element of design, customisation or configuration.
- 10.2. Ultra may agree to prepare specific documentation to the quantity, content and/or format as specified by the Customer. This variation from standard Ultra Electronics documentation must be fully specified by the Customer and agreed by Ultra, on a contract specific basis, and details in the Contract.
- 10.3. Ultra reserves the right not to provide documentation which may be called for in lower tiers of the Customer's procurement documentation which may subsequently be produced during the duration of the Contract if this was not clearly identified and agreed in the Contract.
- 11. Maintenance**
- 11.1. It shall be the Customer's responsibility to arrange for maintenance of the Goods, if required, to be carried out by a person or company approved by Ultra.
- 12. Liability**
- 12.1. Nothing in the Contract shall be effective to exclude or restrict the liability of either Party for death or personal injury caused by the negligence of its employees, agents or subcontractors.
- 12.2. Nothing in the Contract shall be effective to exclude or restrict the liability imposed by the Consumer Protection Act 1987 for damage caused by defective products except to the extent permitted by that Act.
- 12.3. The liability of Ultra to the Customer for direct loss or damage to property, whether in contract, tort (including negligence and breach of statutory duty) or otherwise arising out of or in connection with Ultra's performance of or its total or partial failure to perform its obligations under the Contract, shall, in respect of any one incident or series of incidents attributable to the same cause, be limited in the aggregate to the total sum of the Contract.
- 12.4. Ultra shall not in any circumstances be liable to the Customer in contract, tort (including negligence and breach of statutory duty) or otherwise, for loss, whether direct or indirect, of profits, business or anticipated savings or for any indirect, special or consequential loss, howsoever caused or arising.
- 12.5. Except to the extent explicitly stated elsewhere in the Contract, Ultra accepts no liability for the accuracy of any representations, statements made or advice given or the consequences of reliance by the Customer thereon.
- 12.6. The Customer shall indemnify and hold Ultra harmless against any damages, charges or costs (including court costs and legal fees) arising from any actions, claims or proceedings brought by a third party alleging loss or damage arising out of Ultra's performance of or total or partial failure to perform its obligations under the Contract.
- 13. Intellectual Property Rights**
- 13.1. Ultra warrants that, so far as it is aware, use of the Goods by the Customer will not infringe any Third Party Patents, Copyrights or other Intellectual or Industrial Property Rights within the United Kingdom.
- 13.2. The Customer hereby acknowledges that, notwithstanding the provisions of Clause 13.1 above, Copyright and/or any other Intellectual Property Right(s) which subsists in the Goods or any software contained within the Goods are and shall remain the absolute property of Ultra, unless explicitly stated otherwise in the Contract.
- 14. Default or Insolvency of Customer**
- 14.1. Ultra may terminate the Contract forthwith by giving notice in writing if the Customer becomes bankrupt or insolvent or, being a company, goes into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) or has a Receiver, Manager, Administrator or like person appointed under the Insolvency Act 1986 and such appointment is not discharged within 30 (thirty) days of being made. Exercise by Ultra of its rights under this clause shall be without prejudice to any other rights or remedies it may have and shall not affect any rights accrued or obligations arising on or before the date of termination.
- 15. Force Majeure**
- 15.1. Ultra shall not be liable to the Customer for failure to fulfil any obligation hereunder whether in full or in part where such failure was due to any circumstances beyond Ultra's reasonable control, whether foreseeable or unforeseeable, including but not limited to: acts of God, embargo, any acts of the UK Government, epidemics or pandemics, fire, accident, war, riot, inclement weather, strikes, lockouts, trade disputes, breakdown of plant or machinery.
- 16. Notices**
- 16.1. All notices to be sent under or in connection with the assignment shall be delivered by hand or sent by registered post to the registered address of the Parties.
- 17. Headings**
- 17.1. The Condition and paragraph headings used herein are for purposes of convenience or reference only. They shall not be used to explain, limit or extend the meaning of any part of these terms and conditions of business
- 18. Rights of Third Parties**
- 18.1. The provisions of the Contracts (Rights of Third Parties) Act 1999 are specifically excluded from this Contract. This Contract is mutually exclusive between the Parties unless otherwise identified within the Contract.
- 19. Entire Agreement**
- 19.1. The Contract is the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, whether written or oral. No amendment to the Contract shall be valid unless agreed by Ultra in writing.
- 20. Law, Jurisdiction, Disputes, Waiver and Severance**
- 20.1. The Contract shall be governed by and construed in accordance with English Law, and is subject to the exclusive jurisdiction of English Courts. These

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Conditions do not derogate and are in addition to Ultra's rights under statute and common law.

- 20.2. Any dispute arising under the Contract shall in the first instance be resolved using a method of internal management escalation. If after 30 (thirty) calendar days (unless otherwise mutually agreed) the dispute still remains unresolved, then the Parties agree to refer the matter for resolution in accordance with the Arbitration Act 1996, or for non UK Customers via the International Chamber of Commerce, the place of arbitration shall be London. The decision arising from such arbitration shall be final and binding. The Parties agree to equally share the costs of such arbitration irrespective of the decision.
- 20.3. No exercise, failure to exercise, or delay in exercising any right, power or remedy vested in any Party under or pursuant to the Contract shall constitute a waiver by that Party of that or any other right, power or remedy.
- 20.4. The Condition and paragraph headings used herein are for purposes of convenience or reference only. They shall not be used to explain, limit or extend the meaning of any part of this Contract
- 20.5. Should any provision of the Contract be deemed invalid, illegal or void, then that provision shall be deemed severed from the Contract which shall continue in force notwithstanding such severance. The parties shall negotiate in good faith in order to agree terms of a mutually acceptable and satisfactory alternative in place of the severed provision.

### 21. Export Control/ITAR

21.1. WHERE GOODS ARE TO BE SUPPLIED OUTSIDE THE UK, THE FOLLOWING CONDITIONS SHALL APPLY:-

- a) The Customer shall notify Ultra of any export restrictions that may apply to the Goods supplied under the Order. Both parties agree to comply with all laws and regulations including, but not limited to UK and United States exports, imports, and foreign transactions, International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR99).
- b) ITAR regulations (inclusive of subsequent EAR regulations) stipulate that Customers must inform their suppliers if their products are subject to ITAR regulations. If there is no mention of the ITAR regulations on the quotation request or any subsequent Contract then Ultra shall assume that ITAR regulations do not apply.
- c) The Customer warrants and undertakes that it will not export, re-export, incorporate or transfer by any means, electronic or otherwise, any information, technology or Goods without complying in all respects with the applicable export control legislation, relevant export licence(s), guidelines, notices and instructions in relation to any export or transfer of Goods or information.
- d) In some instances, Ultra's obligation to supply the Goods may be subject to the granting of the necessary export licence(s). In support of this, it may be necessary for Ultra to obtain an End User Undertaking from the Customer, in the format we request, signed by the End User.
- e) The acceptance of any Order is subject to the granting of the necessary export licence(s).
- f) All prices provided by Ultra in local currency are subject to currency Exchange Rate changes. Ultra reserves the right to change the price should the Exchange Rate fluctuate by more than 2%. The Exchange Rate used for price calculation will always be stated on the Quotation by Ultra.
- g) Reference Clause 7 (Warranty), the Customer shall arrange to return defective goods at the Customer's own risk to a service centre recommended by Ultra. The Customer is responsible for ensuring all necessary shipping documentation is provided with returned goods (i.e. temporary importation). Ultra will not accept liability for any taxes or duties that may be as a result of incorrect or lack of documentation.

### 22. Order of Precedence

22.1. In the event of conflict between these Standard Conditions of Sale and any other document referenced within the Contract, then the order of precedence is as follows:

- a) The Contract
- b) These Standard Conditions of Sale
- c) The Quotation
- d) The Customer's Order for the Goods
- e) Any other documents