

ABACO SYSTEMS LIMITED
TERMS AND CONDITIONS OF SALE
CONTRACT ELECTRONIC MANUFACTURING SERVICES

1.0 Definitions

- 1.1 "ABL" means the authorised build level comprising the bill of materials, assembly, drawing(s), schematics and approved vendor listings for the Products.
- 1.2 "the Contract" means the Contract for the sale of goods and/or supply of services between the Seller and the Customer set out in the quotation, the order acknowledgement and these terms and conditions.
- 1.3 "the Customer" means the person, firm or company with whom the Contract is made.
- 1.4 "Customer Information" means all drawings, documentation, data, software, information and know-how provided by the Customer to Seller as necessary for performance of the Contract.
- 1.5 "Customer Tooling" means the tooling (if any) to be provided by the Customer to the Seller pursuant to the Contract.
- 1.6 "the Products" mean products and/or services or any part thereof agreed to be sold as described in the Contract and any replacements thereof or spare parts.
- 1.7 "the Seller" means Abaco Systems Limited.
- 1.8 "Specification" means the technical specification (including the ABL) for the Products that are the subject of the Contract.

2.0 Contract Terms, Quotations and Cancellation

- 2.1 All Contracts made by the Seller or by its agents or subsidiaries are subject to these terms and conditions. Any terms and conditions referred to by the Customer or contained in any order or quotation confirmation or otherwise brought to the notice of the Seller are hereby excluded unless expressly agreed to in writing by the Seller. In the event of any inconsistency, the following shall prevail in this order (1) the order Acknowledgement, (2) the quotation and (3) these terms.
- 2.2 No person has any authority to make any representation or give any warranty relating to the Contract and/or the Products or to agree to any variation or addition to the Contract unless such representations, warranty, variation or addition are expressed in writing and signed on behalf of the Seller by a person duly authorised by the Seller.
- 2.3 Any quotation issued by the Seller shall be capable of acceptance only within 28 days from the date thereof unless otherwise only within expressly stated and any quotation may be withdrawn or adjusted at any time by the Seller.
- 2.4 The Customer shall provide the Seller with the Specification, the Customer Information and the Customer Tooling and all other agreed information, materials and other items necessary to enable the Seller to fulfil its obligations under the Contract.
- 2.5 Changes to the Specification, Customer Information or Customer Tooling shall only be effective and implemented if agreed in writing by authorised representatives of the parties. Any increased costs to the Seller resulting from such changes (including increased cost of manufacture) will be compensated in full by the Customer.
- 2.6 No Contract may be cancelled or part cancelled by the Customer except with the written agreement of the Seller's authorised representative and on terms that the Customer shall indemnify the Seller in full against all liability in relation to such cancellation (including but not limited to loss of profit and the cost of all labour and materials used or appropriated to the Contract).

3.0 Price

- 3.1 All prices (unless stated otherwise) in the Contract are for delivery FCA Seller's facility (Incoterms 2020), exclusive of VAT, export, import or excise duties, and any other imposts or duties payable in respect of Products. Any such taxes, imposts or duties shall be payable by the Customer in addition to the purchase price of the Products and any other sums due to the Seller from the Customer.
- 3.2 The Customer shall not be entitled to the price where the Seller agrees to vary quantities or delivery schedule from those agreed and specified, and unless the price is quoted as being fixed, the prices payable for the products shall be those charged by the Seller at the time of dispatch so that the Seller has the right at any time to revise the quoted prices (without limitation) to take account of increases in costs of raw materials or labour and any variation in exchange rates.

4.0 Materials

When any component or other material is rendered obsolete and/or surplus to Customer requirements for any reason and that component or other material (whether or not with a lead time greater than the relevant lead time for the Products) has been ordered or is committed by the Seller to be ordered against an accepted Contract or Customer forecast, the Customer shall be liable to pay Seller for the cost of all such components and material, together with Seller's relevant handling charge thereon (charged at the same rate as in the quotation). In such event Seller shall notify the Customer of Seller's costs on the basis outlined in this clause and issue an invoice therefor to the Customer which shall be payable within fourteen (14) days.

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For the avoidance of doubt, surplus to Customer requirements shall include (without limitation) any component and/or material ordered by the Seller as part of a minimum order quantity or pack quantity resulting in an excess to the requirements stated on the Customer's order or the Customer's forecast.

5.0 Payment

- 5.1 The Customer shall pay for the Products within 30 days of the invoice date in the currency and manner specified in the Contract unless otherwise specified, without any deduction, set off, or demand.
- 5.2 If Payment is not made upon the due date the Seller may, at its absolute discretion, withhold further deliveries and may without notice charge interest from the due date on a day to day basis at the rate of 3% above the HSBC Bank Base Rate until receipt by the Seller of the full amount whether or not after judgment.
- 5.3 The time of payment shall be of the essence and failure to make any payment on the due date shall entitle the Seller at its option to treat the Contract as repudiated and act accordingly.
- 5.4 The Seller may invoice part shipments separately.
- 5.5 Payment shall be made whether or not the Customer has any complaint in respect of defective Products.

6.0 Acceptance, Non-Delivery

- 6.1 Within 7 calendar days of delivery the Customer shall inspect and test the Products and immediately give notice to the Company of any damage or non-conformity with the Contract. In the absence of such notice, the Products shall be deemed to comply with the terms of the Contract and the Customer bound to accept them. In the event of the Customer wrongly rejecting the Products the Customer shall (in addition to any other liabilities it may have to the Seller) be fully liable for costs, charges and expenses including but not limited to storage insurance and handling expenses incurred as a result directly or indirectly of it failing to accept the Products.
- 6.2 In the case of Products being damaged upon delivery or upon there being any shortages in the consignment, the said claim must be made within the period set out in clause 6.1 and the Customer must have inspected the Products on delivery in the presence of the Seller's delivery agent and any damaged or defective Products or shortages endorsed on the delivery receipt accordingly.
- 6.3 In the case of non-delivery of a whole consignment the said claims must be made within seven days of the Customer receiving the advice note or upon receipt of the invoice whichever is the later.

7.0 Delivery

- 7.1 Delivery FCA Seller's facility (Incoterms 2020), unless otherwise agreed. Any stated delivery date period or rate is given as a guide only and the Seller accepts no responsibility for loss or damage resulting from delay howsoever arising.
- 7.2 If a delivery schedule has been agreed then such schedule shall also be as a guide only, but the Seller reserves the right to deliver and require payment for the Products in accordance with such schedule in the event that delay is requested by the Customer.
- 7.3 Where production of the Products is delayed due to the non-availability of the Specification, Customer Tooling or the Customer Information or any information, materials or other items to be provided by the Customer to the Seller, Seller shall have no liability in respect of any related delay in the provision of any Products and the Customer shall be liable to the Seller as follows:-
- (i) If the delay continues beyond two (2) weeks from the scheduled delivery date for the relevant item(s) to the Seller, the Customer shall compensate the Seller for all costs incurred by the Seller including without limitation those of holding all relevant materials, for the whole of the period of delay.
- (ii) On delivery of the delayed items, Seller shall notify the Customer of:
- (a) any additional costs that would be incurred by Seller as a result of meeting or attempting to meet the delivery date for the Products in the relevant Contract, or
- (b) the revised delivery or completion date if Seller proceeds on the same costing basis as the quotation.
- The Customer will notify Seller in writing by return that either it will pay these excess labour costs or that it opts for a delayed delivery or completion.

8.0 Title and Risk

- 8.1 Title to the Products shall pass when the Product is made available for shipment at the point of shipment.

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8.2 Risk of damage or loss to the Products shall pass to the Customer upon delivery FCA Seller's facility (Incoterms 2020).

9.0 Force Majeure

The Seller shall not be liable for delay or failure in performing its obligations under the Contract to the extent that such failure or delay is caused or contributed to by any Act of God, war, civil commotion, riot, strike, lock-out, trade dispute, breakdown, accident or any other happening or event whatsoever (whether or not of a kind similar to those beforementioned) beyond the reasonable control of the Seller. Should any such event occur, the Seller may at its own option suspend and or cancel the Contract without incurring any liability whatsoever for any loss or damage thereby occasioned.

10.0 Assignment and Delegation

10.1 The Contract is personal to the Customer who may not assign it without the Seller's written consent.

10.2 The Seller may delegate its performance of the Contract and assign its rights hereunder.

11.0 Termination and Default

The Seller reserves the right (without prejudice to its other rights and remedies) either to terminate the Contract between the parties or to suspend further deliveries under it, or require payment in advance in the event that the Customer fails to pay for any other delivery when the same becomes due or the Customer's financial responsibility becomes unsatisfactory to the Seller or if the Customer, being a company, goes into liquidation, or has a receiver appointed or not being a company and who has a receiving order made against him or enters into any arrangement or composition with creditors.

12.0 Warranty and Limitation of Liability

12.1 (a) The Seller warrants that Products will be free from any defect in workmanship for a period of ninety (90) days after the date of delivery ("the warranty period").

(b) The Seller's liability for breach of warranty shall be limited solely to replacing or repairing, without charge, the defective Products or part thereof, or at the Seller's option refunding the price of the Products provided that

(i) the Customer shall have notified the Seller of the defect(s) in writing within the warranty period;

(ii) if requested by the Seller, the Customer shall have returned such defective Products or part thereof;

(iii) such defect shall have been proved by the Customer to be attributable to the Seller.

(c) The warranty hereby given shall not extend to Products which become defective resulting from damage in the course of transportation or by handling, storage, operation, use or transportation maintenance in a manner or environment not conforming to the instructions or specifications of the Seller.

(d) The warranty hereby given may not be assigned by the Customer.

12.2 Save as aforesaid all other conditions, guarantees, or warranties whether express or implied by statute, common law or otherwise including (but without prejudice to the generality of the foregoing) conditions, guarantees or warranties as to quality, fitness for purpose or description of the Products are hereby excluded. The Seller's and its suppliers' liability (if any) for any and all direct loss or damage resulting to the Customer shall be limited to the purchase price of the Products in respect of or in relation to which such loss or damage is claimed. Subject as aforesaid neither the Seller nor any of its suppliers shall be under any liability in contract or in tort for any direct or indirect loss or damage (including but not limited to loss of profit, revenue, savings, contract, bonuses, loss of or corruption to data, special loss or damage, third party liability, management costs, business interruption, loss of production, or loss of goodwill) arising out of the supply or use of the Products except liability which cannot as a matter of law be excluded or limited for (i) fraud; or (ii) death or personal injury due to defective Products or the negligence of the Seller or its suppliers. The Seller shall be relieved of all liability to the extent that fulfilment of its obligations is frustrated, prevented or impeded as a consequence of conforming to any statute, regulation, rule, order or requisition made thereunder, force majeure, or by any cause beyond its control. Both parties acknowledge and agree that the allocation of risk contained in sub clauses 12.1 and 12.2 is reflected in the price of the Product(s).

12.3 Where the Products are manufactured to the design or specifications of the Customer, the Customer warrants that he has full rights to such design or specification and will hold the Seller indemnified in respect of any claim made against the Seller by a third party in respect of confidentiality, infringement of registered design or patent rights, copyright, passing off, defamation or otherwise.

12.4 All existing intellectual property rights of the Customer will continue to be owned by the Customer provided that Seller is hereby granted an irrevocable, royalty free licence to use them to the extent necessary for Seller to perform its obligations

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under any Contract.

- 12.5 All existing intellectual property rights of Seller will continue to be owned by Seller and all intellectual property rights arising in the course of Seller's performance of any Contract will be owned by Seller.

13.0 Confidentiality

The Customer shall at all times keep confidential any information concerning the business of the Seller or the Products (including all technical designs and specifications and details thereof) and shall on demand return any papers relating to the same to the Seller.

14.0 Customer's Property and Lien

- 14.1 Subject to S.2 of the Unfair Contract Terms Act 1977, where the Seller is in possession of any property to the Customer (whether as Consignee or otherwise), the Seller shall not be liable in respect of any damage thereto howsoever caused or in respect of any injury to any person or damage to any property caused by the Customer's property and it shall be the Customer's responsibility to insure accordingly.
- 14.2 The Seller shall have a general lien over the Customer's property in its possession in respect of all monies owing to the Seller (and shall be deemed to be owing whether or not due, invoiced or ascertained) at the date of exercise of such lien. The Seller shall be entitled on giving 14 days' notice to the Customer to sell the Customer's property and to apply the proceeds of sale thereof to the satisfaction of monies owing or deemed to be owing. The Seller shall account for any balance to the Customer but shall otherwise be discharged for any liability whatsoever in respect of the Customer's property.

15.0 Miscellaneous

- 15.1 The Customer shall be responsible for obtaining all consents and authorities which may be required for the sale of the Products hereunder including all licences, authorisations and approvals required for export of Products from the UK or import into any other country and shall indemnify the Seller against any liability in relation to the Customer's breach of any of the provisions of this clause 15.1.
- 15.2 This Contract shall be construed and governed in accordance with English Law and both parties hereby submit to the exclusive jurisdiction of the English Courts.
- 15.3 No indulgence, forbearance or previous waiver extended by either party to the other shall constitute any waiver of any right or remedy.
- 15.4 Nothing in any Contract or pursuant to these terms and conditions shall be deemed to constitute a partnership between the Customer and the Seller nor constitute either party the agent of the other for any purpose.
- 15.5 All notices or other communications under this Contract shall be in writing in English addressed to the addressee's registered office or address stated in the quotation or order (or other address notified to the other party) and shall be sent by hand (and thereby be deemed served when properly left at such address) or by first class pre-paid post (and thereby be deemed served 48 hours after posting).
- 15.6 The headings in these terms are inserted for convenience only and shall not affect the construction of these terms and conditions.
- 15.7 The Contract (Rights of Third Parties) Act 1999 shall not apply to this Contract.