

1 Trading terms and conditions

1 Conditions

- 1.1 These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Goods and services, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.
- 1.2 All orders for Goods or Services shall be initiated by the Buyer raising a purchase order identifying the relevant costed line items detailed in the Sellers quotation, such purchase order shall be deemed to be an offer by the Buyer to purchase Goods or Services from the Seller pursuant to these Conditions.
- 1.3 Acceptance of delivery of the Goods or Services shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 1.4 These Conditions may not be varied except by the written agreement of [a Director of] the Seller.
- 1.5 These Conditions represent the whole of the agreement between the Seller and the Buyer. They supersede any other conditions previously issued.

2 Price & Validity

- 2.1 The Price shall be the price stated on the Seller's quotation. The Price is exclusive of VAT, which shall be due at the rate in force on the date of the Seller's invoice.
- 2.2 Where applicable prices quoted in US\$ shall be based on the exchange rate on the date of the quotation, if prior to order placement the rate varies by >3% a new quotation will be required.
- 2.3 The quotation shall be valid for 30 days unless otherwise stated.

3 Payment and Interest

- 3.1 Payment of the Price and VAT shall be due within [30] days of the date of the Seller's invoice.
- 3.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of [8%] per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.
- 3.3 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Seller.

4 Goods and Services Provided

- 4.1 The quantity and description of the Goods shall be as set out in the Seller's quotation.
- 4.2 The Services provided shall be completed as set out in the Seller's quotation.

5 Order Amendment

- 5.1 Amendments will only be accepted by prior negotiation and written agreement.

6 Delivery of the Goods

- 6.1 Delivery is ex-works, unless stated otherwise.
- 6.2 The Seller undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date, but does not guarantee to do so. Time of delivery shall not be of the essence of the contract.
- 6.3 The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods. If short delivery does take place, the Buyer undertakes not to reject the Goods but to accept the Goods delivered as part performance of the contract.
- 6.4 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for dispatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of so doing.

7 Acceptance of the Goods

- 7.1 The Buyer shall be deemed to have accepted the Goods [48 hours] after delivery to the Buyer.
- 7.2 The Buyer shall carry out a thorough inspection of the Goods within [48 hours] of delivery and shall give written notification to the Seller, within 5 working days of delivery of the Goods, of any defects, which a reasonable examination would have revealed.
- 7.3 Where the Buyer has accepted, or has been deemed to have accepted, the Goods the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

8 Title and risk

- 8.1 Risk shall pass on delivery of the Goods to the Buyer's agents.
- 8.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Seller and shall not pass to the Buyer until the amount due under the invoice for them (including interest and costs) has been paid in full.
- 8.3 Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall store or mark them so that they can at all times be identified as the property of the Seller.
- 8.4 The Seller may at any time before title passes and without any liability to the Buyer:
 - 8.4.1 Repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Buyer's right to use, sell or otherwise deal in them; and for that purpose (or determining what if any Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer.
 - 8.4.2 The Seller may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer.

9 Warranties

- 9.1 The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller in the quotation. [Except where the Buyer is dealing as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977), all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods are excluded]. The Seller will transfer to the Buyer whatever transferable warranties may have been provided by subsystem manufacturers. No warranty will apply if the Product has been subject to misuse, static discharge, neglect, accident or modification, or has been altered in any way.

10 Limitation of Liabilities

- 10.1 Professional (designer) and Product (those items manufactured by the Seller) liabilities are NOT normally covered by existing company insurances since the company is project based there are no standard products and the resulting designs are generally applied from one to ten instances produced for specific customer.
- 10.2 Design liabilities. The formal review procedures (which include the customer) shall be relied upon to ensure that the concept of the design (and at the superficial level the implementation) meet with the customer expectations and can reasonably be expected to meet the requirement specification. All risk areas that can be identified prior to the quotation shall be included in the quotation together with assumptions and external dependencies. The liabilities for the risk areas shall be assigned and declared dependant on the commercial considerations (risk – gain).
- 10.3 Product liabilities. The internal safety assessment of the design and safety inspection (of all hazardous aspects e.g. mechanical stability, durability and sharp edges or levers; electrical supplies, earth bonding, hot surfaces, insulation etc) of the product as manufactured shall be relied upon by the Seller to limit its liabilities.
- 10.4 The Seller shall rely on bought-in sub systems to meet their product design specifications and therefore shall not be responsible for any liability resulting from such sub-systems provided they are used within their specifications.

- 10.5 With respect to Products which do not meet applicable manufacturer's specifications and Value Added Work by the Seller which does not meet agreed Buyer Specifications, the Seller's liability is limited (at the Seller's election) to:
- Refund the Buyer's purchase price for such Product (without interest)
 - Repair such Products
 - Replace such Product
- 10.6 The Buyer shall not in any event be entitled to, and the Seller shall not be liable for indirect, incidental or consequential damages of any nature including, without being limited to, loss of profit, manufacturing expenses, overhead, business interruption costs, loss of data, removal / reinstallation costs, loss of reputation or loss of customers. Buyer's recovery from the Seller for any claim shall not exceed the Buyer's purchase price for the product or service irrespective of the nature of the claim whether in contract, tort, war or otherwise.
- 11 Errors & Omissions Exempt**
- 11.1 The quotation provided by the Seller shall detail the scope of the supply of goods and services. Where services (design, installation, setting to work / commissioning) form part of the quotation then the proposal contained therein shall define the intended design solution and the boundaries of responsibilities. All risk areas that can be identified prior to the quotation shall be included in the quotation together with assumptions and external dependencies. The liabilities for the risk areas shall be assigned and declared dependant on the commercial considerations (risk – gain). Errors and omissions in the quotation and subsequent execution of the contract shall be exempt.
- 12 Force Majeure**
- 12.1 The Seller will not be liable for delays in delivery or for failure to perform its obligations due to causes beyond its reasonable control including, but not limited to, subsystem / product allocations, material shortages, labour disputes, transportation delays, unforeseen circumstances, acts or omissions of other parties, acts or omissions of civil or military authorities, Government priorities, fire, strikes, floods, severe weather conditions, power interruptions, terrorism, epidemics, quarantine restrictions, riots, or war. The Seller may, at its option, cancel any order or remaining part thereof without liability by giving notice to the Buyer.
- 13 Software & IPR License**
- 13.1 Developed software applications.
Generally software is modularised as a method of managing issue control and minimising regressive testing as may result from modifications etc. Modular code blocks enable the reuse of previously developed and proven code thereby minimising costs and risk on successive projects. In order to provide the cost benefit to customers the software modules must not become the sole property of any one customer. Therefore, the Seller shall normally not sell any software or design IPR, rather it shall license such software or IPR to the customer together in some circumstances with source code as may be agreed but specifically shall NOT allow the licensed items to be passed to a 3rd party without express permission being sought and granted.
- 13.2 Installation of 3rd party software
Where the Seller is required to install 3rd party software including operating systems, programming environments or utilities etc. then the customer by accepting the terms of the quotation and our standard terms and Conditions as demonstrated by placement of an order against said quotation and Terms thereby authorises the Seller to accept the 3rd party's licensing conditions on behalf of the customer. Such software, where possible, shall be registered in the customer's name and with the customer details. All original 3rd party licence documentation shall be supplied in an auditable fashion (licence numbers) listed as line items on delivery note and any system test documentation.
- 13.3 Software License and Intellectual Property Rights (IPR)
The Seller's software licence conditions for developed code (as detailed above) shall similarly apply to any IPR as may apply to electronic circuit or mechanical designs, all of the Seller's designs unless specifically stated to be otherwise.
- 13.4 Developed hardware solutions
Modular hardware solutions enable the re-use of previously developed and proven technology. Therefore the seller shall not normally sell any hardware or design IPR, rather that it shall license such hardware or IPR to the customer but shall NOT allow the licensed items to be passed to a 3rd party without express permission/suitable remuneration being sought, agreed and granted.
However, hardware solutions requested by and developed specifically for a particular customer, that are not based on previously developed technology or existing AmFAX Limited IPR, become the property of that customer at payment of invoice. These items will be agreed and recorded within the contract of work between AmFAX Limited and that customer.
- 14 License Agreement**
- 14.1 This License Agreement is a legal agreement between the Buyer (an individual or an entity) and the Seller for Rights to use the Seller's Software design or other Intellectual Property Rights which may be included in a project or task, as may be developed in part or whole for that project or task. This License Agreement is independent of the issued state (development, Beta, production etc) of the product / design.
- 14.2 Placement of a purchase order for a product or development containing licensable components / aspects constitutes acceptance of this license agreement, and acknowledges that the terms contained are understood and the parties agree to be bound by them.
- 14.3 Grant of License. The Seller hereby grants the buyer a non-exclusive license to use the Software / IPR and any related documentation. A back-up copy may be made for archival purposes.
- 14.4 License restrictions. The buyer may not (i) permit other entities to use the Software; (ii) modify, translate, reverse engineer, decompile, disassemble or create derivative works based upon the Software or Documentation; (iii) copy the Software or Documentation (except for back-up or archival purposes); (iv) rent, lease, transfer, or otherwise transfer rights to the Software or Documentation; or (v) remove any proprietary notices or labels on the Software or Documentation. Any such forbidden use shall immediately terminate the license to the Software.
- 14.5 Warranties and Liabilities. The Seller warrants that for a period of 90 days from the date of acquisition the Software, if operated as directed, will substantially achieve the functionality described in the Documentation. The Seller does not warrant that the use of the software will be uninterrupted or that the operation of the Software will be error free or secure.
- 14.6 No other warranties: to the maximum extent permitted by applicable law the Seller disclaim all other warranties either express or implied including but not limited to implied warranties of merchantability and fitness for a particular purpose with regard to the Software, the accompanying written material and any accompanying hardware. If any modifications are made to the Software during the warranty period or if the terms of this License are violated then the warranty shall immediately terminate. This warranty shall not apply if the Software is used on or in conjunction with hardware or software other than the unmodified version of hardware and Software with which the Software was designed as described in the Documentation.
- 14.7 Termination This License terminates if any of the terms are violated.
- 14.8 No Assignment. This Agreement may not be assigned without the Seller's express written consent. In the event that the purchasing entity merges or is acquired by another entity then written notice of such merger or acquisition shall be required to be submitted to the Seller to further acquire consent to the assignment to the new entity.
- 15 Important Miscellaneous**
- 15.1 Arbitration & Jurisdiction.
The terms and conditions (as detailed herewith) shall be governed by English Law, any disputes under these Terms and Conditions will be dealt with by the English courts.
- 15.2 Complete Agreement
The quotation contains the complete and entire understanding between the Parties on the subject matter of the task / project and the terms governing the complete execution of the task / project are as stated in this document which the Buyer by placement of a purchase order against line items from the quotation signify acceptance of these terms which shall not be modified in whole or in part by any subsequent Buyer terms no matter when or how raised. Should it be necessary to modify any term then this shall be done by explicit and specific reference to the affected term of this document with the written agreement of a Director of the Seller's company. Modification of any term or terms shall not change the effectiveness of the unmodified terms.