

Racal Instruments Wireless Solutions Limited, an Aeroflex Company

Terms and Conditions of Purchase

1. INTERPRETATION

1.1 In these Conditions:-

"Company" means Racal Instruments Wireless Solutions Limited, an Aeroflex Company;
"Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Supplier. Where special conditions are stated on the front of the Order, they shall apply equally with these Conditions except that where there is any inconsistency, the special conditions shall apply;
"Contract" means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services;
"Delivery Address" means the address stated on the Order or such other address as the Company may notify in writing to the Supplier;
"Goods" means the goods (including any instalment of the goods or any part of them) described in the Order;
"Order" means the order placed by the Company with the Supplier for the supply of the Goods and Services;
"Price" means the price of the Goods and/or the charge for the Services;
"Supplier" means the person so described in the Order;
"Services" means the services (if any) described in the Order;
"Specification" includes any plans, drawings, data or other information relating to the Goods or Services;
"Writing" includes facsimile transmission and comparable means of communications;
"Year 2000 Compliant" means the high Standard Institution's explanation and definition of Year 2000 conformity (reference: DISCPD 2000-1).

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF PURCHASE

2.1 The Order constitutes an offer by the Company to purchase the Goods and/or acquire the Services subject to these Conditions.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Company or subject to which the Order is accepted or purported to be accepted by the Supplier.

2.3 Any Order placed by the Company shall be treated as confidential and in particular the Supplier shall not make use of the Company's name or the name of any of the Company's customers for publicity purposes without the written consent of the Company.

2.4 No variation to the Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Company and the Supplier.

3. SPECIFICATIONS

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Company to the Supplier or agreed in writing by the Company.

3.2 Any Specification supplied by the Company to the Supplier, or specifically produced by the Supplier for the Company, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in such Specification, shall be the exclusive property of the Company and the Supplier shall take all steps necessary to vest such intellectual property rights in the Company. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.

4. INSPECTION AND TESTING

4.1 The Company shall be entitled to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide the Company with all facilities reasonably required for inspection and testing. Such inspection and testing shall not constitute acceptance by the Company and does not relieve the Supplier of any responsibility under the Contract, whether implied or express.

4.2 If as a result of inspection or testing the Company is not satisfied that the Goods will comply in all respects with the Contract, and so informs the Supplier, the Supplier shall take such steps as are necessary to ensure compliance prior to despatch.

5. DELIVERY

5.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in each case during the Company's usual business hours.

5.2 The Goods shall be marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

5.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

5.4 A packing note quoting the number of the Order and stating description and quantity of Goods must accompany each delivery or consignment of the Goods and must be displayed prominently.

5.5 When the Supplier despatches the Goods, the Supplier shall at the same time send by post duplicates of all relevant advice notes, release notes and invoices.

5.6 If the goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.

5.7 The Company shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Company has had a reasonable time (in no event less than 30 days) to inspect them following delivery or, if later, within a reasonable time (in no event less than 30 days) after any latent defect in the Goods has become apparent.

5.8 The Supplier shall supply the Company in good time with any instructions or other information required to enable the Company to accept delivery of the Goods and performance of the Services.

5.9 The Company shall not be obliged, save when the Supplier has prior to the Goods being despatched requested that the packaging or packing material be returned to the Supplier and the Supplier has agreed to meet the costs of so doing, to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Company.

6. RISK AND PROPERTY

6.1 Risk of damage to or loss of the Goods shall pass to the Company upon delivery to the Company in accordance with the Contract.

6.2 The property in the Goods shall pass to the Company upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Company once payment has been made and the Goods have been appropriated to the Contract.

7. PRICE

7.1 The price shall be as stated in the Order and, unless otherwise so stated, shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies.

7.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Company in writing.

7.3 The Company shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.

8. TERMS OF PAYMENT

8.1 The Supplier shall be entitled to invoice the Company on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.

8.2 Payment by the Company shall be 60 days from the end of the month in which the Goods or Services were accepted. No payments will be made until the Goods and Services have been accepted. Payment may be delayed if the Supplier fails:-

- to supply the required documentation quoting the relevant Order number; or
- to send a monthly statement of account quoting the invoice numbers applicable to each item thereon

but the Company shall remain entitled to all prompt payment discounts.

8.3 The Company shall be entitled to set off against the Price any sums owed to the Company by the Supplier.

9. QUALITY OF GOODS AND LIABILITY

9.1 The Order is placed on the condition that the Goods:-

- will be of satisfactory quality and fit for the purposes they are designed to fulfil and for any purpose held out by the Supplier or made known to the Seller in writing;
- will be free from defects in design, material and workmanship;
- will correspond with any relevant Specification or sample;
- will conform in all respects with the terms of the Order; and
- will comply with the latest applicable harmonised European Standards where such exist or where such harmonised standards do not exist, the latest applicable specification of the International Standards Organisation or the British Standards Institute.

9.2 Without prejudice to any other rights whether implied by statute or otherwise which the Company may have, the Supplier undertakes, at the Company's option, forthwith either to repair, replace or refund the cost of the Products which are or become defective before the sooner of eighteen months from the date of delivery to Company or, if for resale by the Company, twelve months from the date of delivery to Company's customer or within such longer period as may be specified by the Order.

9.3 The Supplier warrants to the Company that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Company to expect in all the circumstances and will comply with all applicable regulations and other legal requirements concerning the performance of the Services.

9.4 The Supplier represents and warrants that the Goods are and shall at all times be Year 2000 Compliant and that there will be no downtime, delay or any other reduction in or disruption to the level and/or quality of the Services due to any failure of the Goods to be Year 2000 Compliant or any activity to ensure such compliance or any inability of the Goods to interface with other goods or systems without error or ambiguity.

9.5 Without prejudice to any other remedies available to the Company, in the event of a breach by the Supplier of Condition 9.4 above:

9.5.1 The Supplier shall fully and effectively indemnify the Company from and against all claims, costs, fees, expenses or other losses incurred directly or indirectly out of such breach;

9.5.2 The Company shall be entitled forthwith upon discovery of the breach to terminate the Contract (and any ancillary agreement) and reject the Goods.

9.6 The Supplier hereby grants to the Company a perpetual, irrevocable, non-exclusive and royalty free licence upon termination in accordance with Condition 9.5.2 to make such modifications, adaptations or enhancements as the Company shall deem necessary to any software forming part of the Goods for the sole purpose of making the Goods Year 2000 Compliant and for such purpose the Company shall be entitled to demand the release of the source code for such software (and all related data and documentation) from the Supplier.

10. RIGHT TO REJECT

10.1 Without prejudice to any other remedies available to the Company, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Company shall be entitled:

10.1.1 to require the Supplier, at the Supplier's expense within 7 days either to repair the Goods or to supply replacement Goods or Services in accordance with the Contract; or

10.1.2 at the Company's sole option, and whether or not the Company has previously required the Supplier to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Supplier's breach and require within (7) days the repayment of any part of the Price which has been paid by the Company in respect of such rejected Goods and Services and, if the Company so requires, any other Goods and Services comprised in the same Order as the rejected Goods and Services together with any additional expenses reasonably incurred by the Company in obtaining replacement goods and/or services.

10.2 The risk in any rejected Goods shall revert to the Supplier with effect from the date of the Company's rejection notice but the title therein shall only revert to the Supplier once the Supplier has complied with its obligations under condition 10.1.

10.3 No faulty or surplus Products manufactured under the Order whether rejected by the Company or not, and to which the name or trade mark or any imitation thereof of the Company has been attached, are to be offered for sale or sold by the Supplier to third parties.

11. INDEMNITY

The Supplier shall indemnify the Company in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

11.1 breach of any warranty given by the Supplier in relation to the Goods or the Services;

11.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Company;

11.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

11.4 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and

11.5 any act or omission of any of the Supplier's personnel in connection with the performance of the Services.

12. SPARE SUPPORT

All Orders placed by the Company on condition that spare parts and identical replacements for the Products will be available to the Company at fair and reasonable prices for a period of 10 years from the date of the Order and that prior to the Products or spare parts thereof being made obsolete at least twelve months written notice will be given to the Company.

13. MANUFACTURING CHANGES

The Supplier must advise the Company in writing of all proposed changes in the Specification or method of construction of the Goods supplied including but not limited to changes in form, fit, function, service life, reliability, maintainability, interchangeability or safety. In the event of the Company accepting the change written approval will be sent to the Supplier.

14. TERMINATION

14.1 The Company shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time prior to delivery or performance, in which event the Company's sole liability shall be to pay to the Supplier a fair and reasonable price for all Goods delivered or in a deliverable state or Services provided at the date when such notice is given but in no event shall such payment exceed the value of the Order.

14.2 The Company shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:

14.2.1 the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

14.2.2 any material change occurs in the management, ownership or control of the Supplier; or

14.2.3 an encumbrance takes possession, or a receiver is appointed of any of the property or assets of the Supplier; or

14.2.4 the Supplier ceases, or threatens to cease, to carry on business; or

14.2.5 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

15. MEMBER OF AEROFLEX GROUP

The Company is a member of the group of companies whose ultimate holding company is Aeroflex Incorporated, and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.

16. ASSIGNMENT AND SUB-CONTRACTING

16.1 The Order is personal to the Supplier and the Supplier shall not, without the prior written consent of the Company, assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

16.2 The Supplier shall not without the consent in writing of the Company sub-contract the Order or any part of it (except as is customary in the trade). All sub-contracts shall be the responsibility of the Supplier and be placed subject to conditions which fully protect the interests of the Company.

17. NOTICES

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be deemed to have been properly served at the time when in the ordinary course of transmission it would reach its destination.

18. WAIVER

No waiver by the Company of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

19. SEVERABILITY

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

20. GOVERNING LAW

The Contract shall be governed, construed and take effect in accordance with the laws of England, and shall be subject to the jurisdiction of the English courts.