

# **Kontron UK Limited**

## **Terms and Conditions of Sale**

### **DEFINITIONS**

"Conditions" are these terms and conditions, or any special terms and conditions on the face of any written Tender, or the Vendor's written acceptance of the Buyer's order (as the case may be);

"Contract" is the contract for the purchase and sale of the Goods;

"Buyer" is the person who accepts a quotation of the Vendor for the sale of the Goods or whose order for the Goods is accepted by the Vendor;

"Goods" are the goods and services (including any instalment of the goods or any parts for them) which the Vendor is to supply;

"Tender" is a tender made by the Vendor's authorised representative and includes any quotation, whether oral or in writing;

"Vendor" is Kontron UK Limited, whose registered office is at 10-18 Union Street, London SE1 1SZ.

### **1. BASIS OF THE SALE**

1.1 All Goods are sold subject to the Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any Tender is accepted or purported to be accepted, or any order is made or purported to be made, by the Buyer.

1.2 No variation to these Conditions shall be binding unless agreed in writing by a director of the Vendor.

1.3 The Vendor's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Vendor in writing.

In entering into the Contract the Buyer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any such representations which are not so confirmed (unless such representations were fraudulently made).

### **2. CONTRACT**

2.1 The Vendor's quotation shall be deemed to be an invitation to the Buyer to make an offer to purchase the Goods subject to the Conditions and such offer by the Buyer shall not constitute a valid Contract until accepted by the Vendor's authorised representative.

2.2 No order submitted by the Buyer shall be deemed to be accepted by the Vendor unless and until confirmed in writing by the Vendor. The Vendor reserves the right at any time to refuse orders and cancel any incomplete orders or to suspend delivery due to circumstances outside its direct control.

2.3 The Buyer is responsible for ensuring the accuracy of the terms of any order and for giving the Vendor any necessary information, including specifications, within a sufficient time to enable the Vendor to perform the Contract.

2.4 The quantity and description of and any specification for the Goods shall be those set out in the Vendor's quotation (if accepted by the Buyer) or the Vendor's acceptance of the Buyer's order. The Buyer warrants that the quantity, description and specification of the Goods appearing on the Vendor's quotation complies with the terms of the Buyer's order.

### **3. DELIVERY**

3.1 Any dates given for the delivery of the Goods are approximate only and the Vendor shall not be liable for any loss, direct or indirect, which may arise from delay in delivery of the Goods howsoever caused. Delivery shall be subject to a delivery charge. Time for delivery shall not be of the essence.

3.2 The Goods may be delivered in instalments. Each delivery shall constitute a separate contract and failure by the Vendor to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

3.3 Any periods or times stated for delivery or for compliance with any other contractual obligation on the Vendor's part ("Estimated Times") are estimates only. The Vendor shall not be responsible for loss or damage resulting from delay or failure to notify the Buyer of any delay. Changed specifications or instructions may result in changes to Estimated Times.

### **4. PRICE**

4.1 All prices are quoted subject to acceptance within any period specified and to any increase which may occur as a result of factors falling outside the control of the Vendor.

4.2 VAT and any other duties or taxes where applicable will be added to all invoices at the rate ruling at the date of despatch.

4.3 Quotations are made at current prices on an ex-works basis and are exclusive of the costs of packaging, carriage, insurance and unloading. Quotations may be withdrawn at any time prior to acceptance of order and shall automatically be taken to have lapsed after 30 days from the date of the Tender.

### **5. CANCELLATION AND RE-SCHEDULING**

5.1 No order which has been accepted by the Vendor may be cancelled or re-scheduled by the Buyer except with the agreement in writing of the Vendor (which shall normally involve a cancellation charge) and on terms that the Buyer shall indemnify the Vendor in full against all loss, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Vendor as a result of cancellation. The Vendor reserves the right to charge a re-stocking administration fee for unused purchases; such a fee to be in the range of 5% to 50% and will be decided on a case by case basis.

5.2 The Vendor may cancel the Contract with the Buyer by giving written notice in the event that:-

5.2.1 any invoice for the sale of the Vendor's Goods is overdue for payment;

5.2.2 the manufacturer of the Goods advises the Vendor of an increase in the price of the Goods;

5.2.3 for reasons beyond the control of the Vendor it is unable to effect delivery following the manufacturer's termination of the Goods or there is an insufficient supply of Goods from the manufacturer;

On the giving of such notice of cancellation, the Vendor shall repay to the Buyer any sums paid in respect of the price of the Goods. The Vendor shall not be liable for any loss or damage arising from such cancellation.

## 6. RETURN OF GOODS AND RETURNS PROCEDURE

6.1 If any Goods are or become faulty or defective in accordance with the provisions of Clause 11 of these Conditions, the Buyer must obtain an RMA (Returns Material Authorisation) number from the Vendor. The RMA number will be valid for a period of 21 days from the date of issue by the Vendor. The Vendor reserves the right to refuse to take delivery of any Goods after this period. Any goods returned must have the RMA number marked clearly on the outside of the package. The Vendor reserves the right to refuse to take delivery of any Goods returned without an RMA number. All goods are returned at the Buyers sole risk.

6.2 The Buyer must ensure Goods are returned in original packaging complete with all cables, manuals, and disks/CD's; failure to comply will render the warranty void.

6.3 If the Buyer wishes to return any Goods purchased in error or incompatible for the intended use, the Vendor reserves the right to either refuse the returns or charge a re-stocking fee. The re-stocking fee will be between 5% and 50%; the exact fee will be decided by the Vendor on a case by case basis.

6.4 The Buyer shall not be entitled to return Goods, which are not in accordance with the Contract. In no event shall the Buyer be entitled to return Goods on the basis of any defect or failure, which is so slight that it would be unreasonable for the Buyer to return the Goods.

6.5 Any Goods returned to the Vendor without a valid RMA number will not be accepted by the Vendor and will be returned to the Buyer freight collect. The Vendor shall specifically not accept the Goods unless it includes the original packaging.

6.6 Subject to clause 11 of these Conditions, the liability of the Vendor is strictly limited to the replacement, repair or credit to the invoiced value of the defective Goods at the discretion of the Vendor.

## 7. PAYMENT AND INTEREST

7.1 The Vendor reserves the right to require payment in full for the Goods at the time of order, or payment in full before the Vendor agrees to despatch the Goods. The Vendor may or may not provide a credit account to the Buyer. If the Buyer has a credit account with the Vendor, payment will be strictly due 30 days from date of invoice (the "Invoice Date"). In the event that the invoice is not paid by the Buyer within 30 days of the month end following from the Invoice Date then the Vendor shall be entitled to charge interest on late payments from the Invoice Date at a rate equivalent to the rate prevailing at the Invoice Date as prescribed by the Secretary of State pursuant to section 6 of The Late Payment of Commercial Debts (Interest) Act 1998. The Vendor reserves the right at the Vendor's discretion to refuse to establish a credit account for any Buyer, to refuse credit to any Buyer notwithstanding that a credit account may already have been established, and to withdraw credit account facilities without prejudice to the Vendor's rights.

7.2 If the Buyer has a credit account with the Vendor, the credit limit as determined from time to time by the Vendor shall not be exceeded without the written consent of the Vendor's authorised representative. Credit facilities may be withdrawn at any time at the discretion of the Vendor.

7.3 Unless otherwise agreed in writing, any credit account outstanding beyond agreed payment terms will be passed to a debt recovery agency and will be subject to a surcharge of twenty pounds to cover the cost incurred; such overdue accounts will also be subject to any other costs incurred in obtaining settlement.

## 8. RETENTION OF TITLE AND RISK

8.1 The risk in the goods shall pass to the Buyer on despatch of the Goods. At that moment, the Buyer shall become responsible for the care and protection of the goods and shall take out at its own expense adequate and comprehensive all risks cover on the goods (with a note of the Vendor's interest endorsed therein until the Vendor has received payment of the price in full).

8.2 Notwithstanding delivery and the passing of risk in the Goods, title in the Goods (including full legal and beneficial ownership) shall not pass to the Buyer until the Vendor has received payment in full for all Goods supplied by the Vendor to the Buyer under all contracts between them. Payment of the full price for the Goods shall include the amount of any interest or other sums payable under contracts between the Vendor and the Buyer.

8.3 Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the Vendor's fiduciary agent and bailee, and shall keep the goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Vendor's property. Until that time the Buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Vendor for the proceeds of the sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

8.4 Until such time as the property in the goods passes to the Buyer (and provided the goods are still in existence and have not been resold) the Vendor shall be entitled at any time to require the Buyer to deliver up the Goods to the Vendor and, if the Buyer fails to do so forthwith, to enter upon any premises or vehicles of the Buyer or any third party where the goods are stored and repossess the goods. All additional costs incurred by these actions shall be borne by the Buyer.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for an indebtedness any of the goods which remain the property of the Vendor.

## 9. TERMINATION

9.1 The Vendor shall have the right immediately to terminate or suspend any further deliveries under the Contract or any other contract with the Buyer without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, if:

9.1.1 the Buyer fails to make any payment when due or breaches any provision of the Contract;

9.1.2 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or the Vendor reasonably apprehends that any of these events is about to occur in relation to the Buyer.

The right of termination given by Clause 9.1 shall be without prejudice to any other right or remedy of either party in respect of any breach committed under the terms of this Agreement.

## 10. DEFAULT

The Buyer shall fully and effectively indemnify the Vendor against the total expense to the Vendor arising out of the Buyer's breach or breaches of these conditions of sale. Such expense shall include (without limitation) (i) all expenses incurred by the Vendor in sourcing and building the goods (ii) all court fees (iii) all amounts payable to the Vendor's professional advisers (payable on an indemnity basis) in pursuing claims against the Buyer for breach or breaches of these conditions of sale and for enforcing any judgement/s and/or order/s (iv) all amounts payable to the Vendor's insurers and/or debt recovery agents, in each case including anticipated sums payable by the Vendor only after payment of any sums from the Buyer.

## 11. GUARANTEE

Unless otherwise stated all Goods carry a 24 month return to base guarantee from invoice date. If any Goods are or become faulty or defective by reason only of the use of defective materials or workmanship within a period of twenty-four months from the date of invoice, the Vendor will at the Vendor's option either replace or repair such Goods provided that the Buyer shall have notified the Vendor in writing of the fault or defect in the Goods, and shall have returned the faulty or defective Goods to the Vendor for inspection in accordance with clause 6 of these conditions.

11.1 The Vendor reserves the right to terminate the guarantee if the Goods became defective due to wilful damage, negligence, abnormal working conditions, failure to follow the Vendor's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Vendor's written approval. The Vendor shall be under no liability to honour the guarantee of any Goods (or any other warranty condition or guarantee) if the total price of the Goods has not been paid for by the due date for payment.

11.2 For parts, materials or equipment not manufactured by the Vendor, the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Vendor.

## 12. CLAIMS

12.1 The Vendor shall not be liable for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special indirect or consequential loss (including loss or damage suffered by the Buyer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Vendor had been advised of the possibility of the Buyer incurring the same. In any event, the Vendor's entire liability under any contract shall be limited to damages of an amount equal to the price of the goods. The Vendor does not attempt to limit liability for personal injury or death caused by its negligence or the negligence of its employees or agents.

12.2 Subject to the provisions of the Unfair Contract Terms Act 1977, all warranties, conditions, representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.3 To the extent the law does not permit the liabilities concerned to be excluded and save as otherwise expressly provided, the Vendor's entire aggregate liability for all claims shall be limited to damages of an amount equal to the price of the Goods.

## 13. FORCE MAJEURE

The Vendor shall (i) in any event not be liable for loss or damage and (ii) be entitled to cancel or rescind the contract if the performance of its obligations under the contract is in any way adversely affected by any cause whatsoever beyond the Vendor's control including (but not limited to) the delays or default of any sub-contractor, war, strike, lock-out, trade disputes, flood, fire, riot, act of God, accident to plant or machinery, shortage of materials, shortage of labour, shortage of transport or shortage of fuel.

## 14. GENERAL

14.1 The Vendor may assign its rights and obligations. The Buyer may not assign its rights and obligations.

14.2 The Buyer shall not rely upon any representations as to the goods or their fitness for any particular purpose unless the Vendor specifically agrees these in writing. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Vendor shall be subject to correction without any liability on the part of the Vendor.

14.3 No delay or failure by the Vendor in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Vendor of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Vendor shall be effective unless in writing.

14.4 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.

14.5 These Conditions, and the Vendor's acceptance of order, constitute the entire agreement between the Vendor and the Buyer concerning the supply of the Goods and replace and supersede any prior arrangement, understanding, warranty or representation (other than any fraudulent misrepresentation).

14.6 The Contract shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.