



TERMS OF SALE

1. DEFINITIONS

'Company'	shall mean Herald Electronics Limited
'Customer'	shall mean the purchaser of the goods
'Goods'	shall mean all goods and services embodied in the order
'Order'	shall mean the customer's offer to purchase the goods on the conditions
'Conditions'	shall mean the terms and conditions contained herein
'Contract'	shall mean the company's written acceptance of the order
'Part tooling charge'	shall mean a contribution towards the cost of tooling
'Part design charge'	shall mean a contribution towards the cost of design
'Delivery'	shall be ex-works

2. GENERAL

- a) In the event of inconsistency between the Conditions and those of the customer or any other party, the Conditions will prevail.
- b) Any variation in the Conditions shall be made in writing and signed by an authorised officer of both parties.
- c) Any forbearance shown by either party in respect of any of the Conditions shall not be a waiver of any rights under the Conditions.
- d) The Customer shall not assign the Contract or any rights thereunder without the written consent of the Company.
- e) The headings in the Conditions are for convenience only and shall not affect the construction thereof.

3. QUOTATIONS AND PRICES

- a) A quotation will be accepted only when an acceptance is received in writing by the Company and acknowledgement of order has been issued by the Company
- b) Unless otherwise specified by the Company in writing, quotations are subject to materials being available on receipt of Order and valid for 30 (thirty) days from the date of quotation.
- c) The Company reserves the right:
 - i) to pass on to the Customer increases in costs to it after the date of the quotation and before delivery including (but not limited to) increases relating to materials, wages, currency exchange rates, transport and taxes, or where the increase is due to any act or default of the Customer including (but not limited to) the supply by the Customer of delayed or incorrect or faulty components, printed boards or piece parts or of test equipment and/or processes which is slower to operate than anticipated; and
 - ii) to charge for carriage by whatever method at the Company's option and packing; and



- iii) to charge for any additional design work or amendments to the specifications of the Goods used for quotation purposes or to the Customer's requirements carried out by or on behalf of the Company at the Customer's request; and
- iv) to charge for storage and other additional costs if the Customer fails to give delivery instructions within 7 (seven) days after the Goods are ready for despatch and, in such event, to invoice at the original delivery date.
- d) All prices are ex-works unless otherwise stated by the Company in writing.
- e) All prices are exclusive of Value Added Tax which shall, unless otherwise stated, be payable in addition by the Customer at the prevailing rate.

4. DELIVERY

- a) Any time or date given to the Customer for the delivery of goods or for the provision of services is an estimate only and the Company shall not be liable in any manner whatsoever or for any loss or damage whatsoever for failure to deliver or to provide the services on such date or for any delays in delivery not exceeding 28 days beyond the agreed delivery date.
- b) Risk shall pass to the customer on delivery, or in the event of delayed delivery pursuant to Clause 3 of the conditions, from the commencement of the delay.
- c) Goods must be signed for unexamined and the Customer shall notify of any subsequent claim in writing to the Company:
 - i) for damage within 5 (five) working days after receipt of the Goods; and
 - ii) for rejection request for a returned goods authorisation be made within 10 (ten) working days. Returns made for rejections beyond 10 days will be returned to the Customer or repaired or replaced at the Customers cost.
 - iii) for shortage (subject to Clause 4d of the conditions) within 10 (ten) working days after receipt of the goods or invoice (as the case may be), and in all cases (other than non-delivery) the Company must be given a reasonable opportunity to inspect the Goods in the state or condition in which they were received.
- d) The Company reserves the right to deliver the Goods:
 - i) in more than one consignment and to invoice each consignment separately. Failure to deliver one consignment will not vitiate the contract so far as it relates to the remaining deliveries.
 - ii) in quantities 10% above or below the scheduled quantities as may be considered reasonable having regard to the quantities ordered and the time interval between successive consignments.
- e) In the event that the Customer shall delay delivery by more than 7 (seven) days by reason of its failure to supply essential parts or information by the due date, the Company reserves the right to invoice the Customer for all affected product at the agreed price for completed product.
- f) The Customer may reschedule delivery of the product provided that the product is not due for delivery to the customer within 8 weeks and the company agree in writing prior to any rescheduling of product.
- g) The maximum duration that a delivery can be rescheduled is 12 weeks from the original delivery date unless agreed in writing with the company.



5. PAYMENT

- a) All payment shall be made by the Customer (without discount deductions made) within 30 (thirty) days of the date of the invoice.
- b) Unless otherwise agreed by the Company in writing, a deposit of 50% of the quoted prices of all design, layout, mask and tooling charges is required with the order. The remainder of all such charges is payable at the time of receipt of the first prototype or first production batch, whichever is applicable.
- c) Time is of the essence in payment of all invoices and the company reserves the right to suspend deliveries or to terminate the contract when payment is overdue.
- d) In the event of the Customer failing to pay in due time without due course and in full the amount(s) due the Company shall (without prejudice to any of its other rights) be entitled at any time to withhold performance of any other Contract with the Customer and/or to discontinue forthwith with the provision of any other services ("services" means and includes design and development, delivery, installation of machines, equipment or parts) products and where applicable maintenance of the same and provision of advice for the customer whether under this or any other Contract with the Customer.
- e) The Company reserves the right to invoice the Customer for costs of materials including handling and profit if the customer has not supplied the Company with drawings, data, materials or if the Customer has rescheduled the original delivery of Goods (ref 4g).
- f) The company reserves the right to charge interest on overdue accounts at the rate of 5% per annum over the Base Lending Rate for the time being of Lloyds TSB banking services.

6. REPRESENTATIONS, CONDITIONS, WARRANTIES AND EXCLUSIONS

- a) The Company will within a reasonable time, see section 4.0:
 - i) at its discretion replace or repair Goods found to its satisfaction to have been damaged in transit, unless it is proven that specified packing methods are inappropriate for use.
 - ii) credit and make good any admitted shortages at the previously invoiced price.
 - iii) deliver Goods found to its satisfaction not to have been delivered to the Customer.
- b) The Company will, at its discretion, replace or repair free of charge any of the Goods found to its satisfaction to be defective by reason of faulty materials or workmanship provided the Goods are returned to the Company carriage paid immediately the Customer becomes aware of the defect and in any event no later than 90 (ninety) days after delivery and provided further that the Goods have not been tested, used, stored or maintained in a manner or for a purpose other than that for which they were specified, designed and tested and provided further that the defect does not arise from components or other items supplied by the Customer or his agent or from components or other items specified as to type and manufacturer by the Customer or his agent.



- c) In the case of Goods or their components or other parts not manufactured by the Company, its liability shall in no circumstances extend beyond the liability to the Company of the manufacturer to such goods, components or other parts.
- d) Where the company has reason to believe that the testing applied by the Customer or his agent under the customer's explicit instructions or the customer's usage may be giving rise to defect and rejection by the customer, the customer shall afford the company's personnel reasonable access to the workplace in the premises on which the testing or usage is occurring in order to assist in the assessment of liability in a fair and reasonable manner and to permit suitable corrective action by both parties, as appropriate.
- e) Unless otherwise agreed by the Company in writing, for custom circuits the Customer is responsible for ensuring that the component electrical values and tolerances thereon chosen for the design and any mandatory or preferred component types and suppliers enable all the specified requirements for the completed circuit to be met with 100% yield when all such components perform to their respective specifications and are correctly connected. This condition also applies under any 'worst case' circuit operating conditions, whether specified or experienced in normal use and with due allowance for parametric changes in performance over the life of the goods which should have been allowed for in the electrical design. Any costs arising from failure by the customer to comply with this condition 6e will be for the customer's account.
- f) Goods returned hereunder will, if found not to be defective or if containing a defect for which the customer is responsible, be returned to the customer at its expense and subject to a handling charge of 10% of the invoice price of the returned goods together with value added tax thereon if applicable.
- g) The Company's obligation to repair or replace the goods is the sole liability of the company (except in the case or death of personal injury caused by negligence within the meaning of Section 1 of the Unfair Contract Terms Act 1977) and all other representations, warranties, conditions, terms and statements, express or implied, statutory or otherwise, are hereby excluded.
- h) Where the Company undertakes work which involves design there shall be no liability on the company for the end use, application or its compliance with legislation pertaining to the end use or application of the ultimate product. The Company will require a nominated authority of the Customer to effect acceptance of the design with no further liability to the Company.
- i) The Company shall not be liable for any other direct consequential or other loss, or loss of profits (including but not limited to loss of data) of whatever kind and howsoever arising.
- j) The Customer shall not rely on any representation concerning the Goods unless the same shall have been made by the company and contained within the contract.
- k) Having regard to the ability of the customer to obtain insurance cover in respect of the goods, the liability of the company shall in any event be limited to the invoiced price of the goods.
- l) Where free issue materials are supplied by the customer, the customer will be responsible at all times for loss or damage to these materials whether in transit to or from or at the company's premises or the premises of the company's sub-



contractor's. All material supplied by the Customer will be under cover of a purchase order from the Company.

7. TITLE

- a) Notwithstanding delivery of and passing of the risk in the goods, ownership of all goods supplied by the Company shall remain vested in the company until payment for these goods has been secured by the Company in full.
- b) The Company may for the purpose of recovery of its products enter upon any premises where they are stored or where they are recently thought to be stored and may repossess and thereafter resell the same. For the purpose of entry the Customer grants an irrevocable licence on behalf of itself and as agent for the occupier / owner of such premises if different.
- c) If a Receiver or Manager or any other person acting on behalf of the Customer shall in any way seek to impugn the Company's title to the products or shall seek to claim that this conditional sale amounts to a charge on the Customer's assets he shall pay to the Company as agreed and liquidated damages for slander of title treble the recent agreed price of the product.
- d) Such payment will become due immediately upon the commencement of any act or proceeding in which the Customer's solvency is involved.

8. HEALTH AND SAFETY

- a) The Company hereby gives notice that it has available information or product literature concerning Health and Safety aspect of such materials as are specified by the Company when used in the manner for which they have been designed and tested. Unless the Customer requests such information immediately on receipt of the Company's order acknowledgement, it will be assumed that the necessary data are already in the customer's possession and that the information and advice available from the Company is not required.
- b) Where the Customer supplies components or other items for incorporation in the goods, it shall ensure that sufficient information on the health and safety aspects of such products is supplied at the time the affected materials or items are delivered to the company to enable their use in a manner, which minimises any associated risks and hazardous consequences.
- c) The customer shall be solely responsible for and shall keep the company indemnified against any loss, liability or expense arising from use of the goods other than in accordance with the company's operating instructions or (where no such instruction exist) in a manner which could not reasonably be considered acceptably safe and with minimum risk.

9. PATENTS

The Customer will indemnify the Company against all actions, costs (including the costs of defending any legal proceedings), claims, damages or other expenses which may arise from alleged infringement of patents, trademarks, registered designs, copyright, intellectual property or other rights by goods made to the Customer's designs or specifications.



10. **SPECIFICATIONS, DRAWINGS, PHOTOMASTERS, COMPUTER PROGRAMMES**

- a) The Company will use all reasonable endeavours to maintain strict commercial security for all customer furnished documents, drawings, photomasters data and computer software entrusted to it.
- b) All intellectual property rights embodied within tools, jigs, dies, layouts, designs, manufacturing equipment and processes, inspection methods and procedures or any other matter made available by the company to the customer in connection with the goods shall remain the property of the company and not be passed or disclosed to any third party without the company's prior agreement in writing.

11. **FORCE MAJEURE**

The Company shall have the right to cancel or delay delivery or to reduce the quantity delivered if it is prevented from or hindered in or delayed in delivery of goods through any circumstances beyond its reasonable control, including but not limited to strikes, lock-outs, labour disputes, armed conflict, civil disturbance, or riot, fires, floods, acts of God, acts of Government, currency restrictions, unavailability or shortage of materials, breakdown of machinery, or failure of supplier, carrier or any sub-contractor to deliver on time.

12. **DEFAULT**

If the customer shall commit any breach of the Contract or be or become insolvent or unable to pay its debts or commit any act of bankruptcy or (being a limited company) go into liquidation other than a voluntary liquidation for the purpose of amalgamation or reconstruction only to have a receiver appointed of its undertaking or assets or a substantial part thereof or have execution levied upon its goods or assets, the company may without notice terminate the Contract or the unfulfilled part thereof and stop any goods in transit without prejudice to any other right or remedy which the company may lawfully enforce or exercise.

13. **CANCELLATION**

If the customer cancels an order the Customer shall pay to the company all costs incurred by the Company in respect of such order and 20% of the value of such order.

14. **LAW**

The conditions of the Contract shall be governed by English Law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.



15. WARRANTY

The company shall offer a period of warranty from the date of despatch from the Company premises, or from the date of storage on the Company's premises for a period of 12 months for all materials purchased and workmanship incorporated within the product. No warranty is provided for services, such as design and development, unless agreed within the contract.

16. ACKNOWLEDGEMENTS

There are no acknowledgements to these conditions.