

Terms of Trade—Offshore Electronics Limited

1. General

A: All contracts of sale made by Offshore Electronics Limited (“Offshore Electronics”) shall be deemed to incorporate acceptance of these terms and conditions and of any special conditions (if any) specified in the acknowledgement. Such special conditions taking precedence in the event of any conflict with these terms and conditions. Any conditions proposed by the customer shall, except insofar as they confirm these terms and conditions or have been specifically agreed in writing by Offshore Electronics, be expressly excluded.

B: No contract shall come into effect until the Customer’s order has been accepted in writing by Offshore Electronics.

2. Prices

A: Prices quoted are the net ex-works prices ruling at the date of quotation. Packing, delivery, VAT and any other taxes or fiscal charges levied on Offshore Electronics shall also be paid by the Customer and will be invoiced at the date of delivery.

B: Quotations are open for acceptance for 30 days unless otherwise stated.

C: Offshore Electronics is entitled without prior notice to adjust the price quoted to take account of any actual alteration before the date of delivery in costs to Offshore Electronics which directly affect the costs to Offshore Electronics of supplying the goods, including but not limited to increases in the costs of labour, materials, sub contracted services, import or export duties or tariffs, transport, or relating to exchange rate movements.

D: Where Offshore Electronics has agreed a fixed price with the Customer or has accepted an agreed price variation formula, Offshore Electronics reserves the right notwithstanding such agreement to vary prices between the dates of quotation and delivery:

(i) There has been any variation of the order or agreed software specification; or

(ii) Offshore Electronics has to delay or suspend work on the order due to the Customer’s instructions, lack of instructions, lack of information or a delay or failure by the Customer to provide free issue material.

3.Payment

A: Subject to Offshore Electronics approval of the customers credit rating, full payment of all invoiced items shall be made from the invoice date unless otherwise specified in the quotation. Offshore Electronics reserves the right to charge interest at 2% above the base rate of RBSI on all overdue payments from the due date until the date of payment as well as before any judgment.

B: If the Customer fails to make payments on the due date, Offshore Electronics may:

(i) Suspend all further deliveries of goods and performance of services to be made under this contract and any other contract with the Customer, in which event the Customer may not be released in any respect from its obligations to Offshore Electronics under this or any other contract, or

(ii) Terminate this contract and in its absolute discretion any other contracts with the Customer in accordance with clause 13 below, and claim damage from the Customer for breach.

4. Cancellation

No contract for goods ordered, obtained or manufactured for the Customer may be cancelled, and no goods may be returned without the prior written consent of Offshore Electronics. It shall be an implied condition of any cancellation or return to which Offshore Electronics so consents that the Customer shall indemnify Offshore Electronics against all expense and loss (including loss of profits) occasioned thereby. Payment in respect of any such cancellation shall be made in accordance with the payment terms contained in clause 3 hereof.

5. Delivery

A: Offshore Electronics will use its best endeavors to make shipments of the goods to the timetable agreed with the Customer. However time is not of the essence in this respect, and Offshore Electronics accepts no liability for any loss or damage whatsoever including consequential loss or damage suffered by the Customer as a result of shipment delays. Offshore Electronics reserves the right to make such part or complete shipments as may be most convenient to it or where, due to circumstances beyond its control, it is unable to make shipment as agreed.

B: Notwithstanding that the quoted price may include the cost of carriage from Offshore Electronics’ premises, the risk in the goods sold shall pass to the Customer upon leaving Offshore Electronics’ premises. Offshore Electronics will at the cost and risk of the Customer deliver the goods to the Customer’s premises in the United Kingdom or in the case of export sales to the seaport or airport anywhere in the world designated by the Customer. Offshore Electronics accepts no liability for loss or damage to the goods occurring in transit save insofar as Offshore Electronics may recover from the carrier concerned.

C: The Customers shall keep the goods fully insured in their full replacement value against all risks prudently insured against least throughout the period from the risk in the goods passing to the Customer and the title to the goods passing to the Customer.

D: On dispatching any goods to be delivered elsewhere than at Offshore Electronics’ premises, Offshore Electronics will send to the Customer an invoice stating the date of dispatch. No claim for loss or damage in transit or for errors in dispatch or invoicing will be accepted by Offshore Electronics unless a separate written notice is given to the carrier concerned (if any) and to Offshore Electronics within three days of the receipt of the goods, followed by a complete claim within ten days of the receipt of the goods.. In the case of non-delivery, a separate written notice must be given to the carrier concerned (if any) and to Offshore Electronics within fourteen days of the invoice.

6. Passing of Risk and Title

A: Risk of loss or damage to the goods shall pass to the Customer at the time such goods leave Offshore Electronics’ premises.

B: The legal and beneficial ownership of the goods shall not pass to the Customer until payment in full of all sums due and owing by the Customer has been made to Offshore Electronics in respect of the goods.

C: If at the time when legal and beneficial ownership of the goods would otherwise pass to the Customer under paragraph 8 of this clause sums are due and owing by the Customer to Offshore Electronics otherwise than in respect of the goods, then legal and beneficial ownership of the goods shall not pass to the Customer under that paragraph until payment in full of all such other sums has been made by the Customer.

D: Until legal and beneficial ownership of the goods shall pass to it, the Customer shall hold the goods as bailee for Offshore Electronics, but shall be at liberty to transfer the legal and beneficial ownership of the goods in the normal course of trading.. Pending legal and beneficial ownership passing to the Customer, the Customer shall keep the goods in good order and in such manner that they can be readily identified as the property of Offshore Electronics. Proceeds of any sale of the goods shall be paid into a separate bank account opened by the Customer

E: The whole of the price for the goods shall not be treated as paid until any cheque, bill of exchange or other instrument of payment given by the Customer has been met on presentation or otherwise honored in accordance with the terms. Offshore Electronics may sue for the whole of the price at any times after it has become payable

F: Payments shall be applied to invoices in the order in which they were issued and to the goods in the order in which they are listed in invoices.

G: If the Customer sells or disposes of the goods in the normal course of trading before the prices is paid, the Customer shall, subject to paragraph H of this clause, hold on trust for Offshore Electronics

(i) if the goods have not attached to other goods, the whole of the proceeds of sale; or

(ii) if the goods have been attached to other goods, such proportion of the proceeds of the sale of the goods and other goods as represents the cost to the Customer of the goods supplied by Offshore Electronics attached thereto.

H: The trust declared in paragraph G of this clause shall be void if and to the extent that in the like terms arises by operation of law in favour of Offshore Electronics . The Customer hereby irrevocably appoints Offshore Electronics as its attorney for the purpose of perfecting Offshore Electronics’ title to any such proceeds of sale referred to in paragraph G of this clause.

J: The Customer shall not until payment of all sums owing to Offshore Electronics

(i) pledge the goods or documents of title thereto or allow any lien to arise thereon;

(ii) deal with or dispose of the goods or documents of the of title there to or any interest therein otherwise than in the normal course of trading.

K: If the Customer defaults in the punctual payment of any sum owing to Offshore Electronics, then Offshore Electronics shall be entitled to the immediate return of all goods sold by Offshore Electronics to the Customer (or the documents of title thereto) in which the legal and beneficial ownership has not passed to the Customer, and the Customer hereby authorizes Offshore Electronics to recover the goods or documents and to enter any premises of the Customer for that purpose. Demand for or recovery of the goods or documents by Offshore Electronics shall not in itself discharge either the Customers’ liability to pay the whole of the price and take delivery of the goods, or Offshore Electronics’ right to sue for the whole of the price.

L: If any provision or part of this clause should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable or invalid shall be severed from this clause and the enforceability and validity of any parts or provisions of this clause shall not be affected by such severance.

7. Liability

A: Offshore Electronics will at its option repair or arrange for the repair of or replace or refund the price of any goods manufactured by Offshore Electronics where the hardware comprised in such goods is found to be defective by reason of faulty materials or workmanship, provided that any such defect is notified to Offshore Electronics within four weeks of receipt of the goods and that the goods are returned forthwith, carriage paid to Offshore Electronics’ premises, or at Offshore Electronics option are made available at the Customer’s premises for attention by Offshore Electronics qualified personnel. Where the goods are repaired at the Customer’s premises, the Customer shall be liable for the travelling and subsistence expenses of Offshore Electronics personnel.

B: In respect of goods not manufactured by Offshore Electronics, the customer shall be entitled to such benefits as Offshore Electronics may recover under any guarantee given to Offshore Electronics in respect thereof by the manufacturer or supplier of such goods.

C: Offshore Electronics accept no liability

(i) in respect of damage to the goods sustained in transit,

(ii) for defects caused by the customers design, installation, operation or maintenance of the goods,

(iii) where the goods have been used for an application other than that specified at the time of the order was acknowledged or not in accordance with Offshore Electronics’ recommendations;

(iv) where the Customer has failed to observe the terms of payment for the goods or any other obligations imposed by these terms and conditions;

(v) for defects in software, the Customers’ drawings or specifications, or free issue part;

(vi) for any consequential loss or damage (including loss of profit) suffered by the Customer arising in any way whatsoever from the goods.

D: Where goods have been ordered, obtained or manufactured to the Customers’ own design or specification, Offshore Electronics accepts no liability for any failure or defect in such goods except insofar failure or defect arises as a result of the failure of Offshore Electronics to follow the design or specification provided, and in particular Offshore Electronics gives no warranty as to the fitness for any particular purpose of goods so supplied to the Customers’ design or specification. The Customer shall indemnify Offshore Electronics for any liability suffered as a result of Offshore Electronics following designs and specifications provided by the Customer, including any such liability suffered as a result of third party claims for infringement property rights.

E: Except as specifically set out herein, Offshore Electronics shall be under no liability in respect of the quality, condition or description of the goods or for loss or damage howsoever caused to the Customer or to any other person (provided that Offshore Electronics shall not hereby exclude liability for death or personal injury caused by the negligence of Offshore Electronics), and any term, representation, condition or warranty to the contrary, whether express or implied by statute, common law or otherwise, is hereby expressly excluded.

8. Health and Safety at Work

The Customer undertakes that it will comply and will procure that its employees, customers and every other person working on, or using, the goods comply in full with the instructions and recommendations made in any manual or handbook provided by Offshore Electronics or other manufacture of the goods, and that they will comply with all other instructions given in connection with the use of operation of the goods. The Customer shall keep Offshore Electronics indemnified against any loss, liability or expense arising directly or indirectly from the use of the goods other than in accordance with their operating instructions.

9. Improvements and Alterations

A: Offshore Electronics has a policy of continuous improvements to its products, and in pursuance of this policy reserves the right to make any changes in material or specifications of goods having regard to all the circumstances it believes to be reasonable or desirable. Where such changes involve the substitution of equivalent or higher quality components or materials, Offshore Electronics shall not be required to give the Customer notice of such changes. In other cases Offshore Electronics will make proposals for changes to the Customer for their approval before implementation.

B: Where the design of the goods is the property of the Customer, the Customer may request design changes in the goods. Such changes must be promptly advised to Offshore Electronics. If the implementation of the change allows for the use of the materials either held by Offshore Electronics in stock or already ordered by Offshore Electronics for the goods before the Customers modifications and requires no additional expenditure by Offshore Electronics such changes may be made without further charge to the Customer. In relation to material made redundant by such changes, the Customer shall pay for such material, and at Offshore Electronics’ option;

(i) such redundant material will be sent to the Customer; or

(ii) such redundant material will be retained by Offshore Electronics at the Customer’s risk for inclusion in other goods manufactured by Offshore Electronics, in which case Offshore Electronics will reimburse the Customer for the material when used at the price paid by the Customer.

10. Documentation Representation and Copyright

A: All description matter, weights, dimensions, performance figures and other documentation supplied by Offshore Electronics and the description and illustrations contained in its catalogues, price lists and other advertising matter are approximate only and intended merely to describe generally the goods and services offered by Offshore Electronics. They are not unless it is expressly so stated in the contract deemed to form any part of any contract of sale and are not to be regarded as a warranty or representation.

B: All specifications, drawings and technical representations supplied by Offshore Electronics or the property of Offshore Electronics and shall not be reproduced or copied or used in whole or in part as the basis of the manufacture or sale of items without the written permission of Offshore Electronics. All such material and all information and “know how” whenever supplied shall at all times be treated by the Customer as confidential and shall not without Offshore Electronics’ consent be used by the Customer except for the purpose of the operation of the goods supplied hereunder; nor shall they without the written consent of Offshore Electronics be communicated to third parties.

11. Export Contracts

In all export contracts the following provisions shall have effect and shall prevail over any conflicting provisions in the other conditions contained herein:

(i) in relation to payments

(a) payment shall be made by irrevocable letter of credit confirmed by a bank in Guernsey acceptable to Offshore Electronics.

(b) The full price shall be payable to Offshore electronics against presentation of the relevant documents referred to in the letter of credit:

(c) Such letter of credit must remain valid for at least 21 days after the scheduled delivery date to allow for clearance of documents; and

(d) All bank charges, both in the United Kingdom and elsewhere, are payable by the Customer.

(ii) in relation to shipping

(a) in the absence of explicit shipping directions, Offshore Electronics will forward the order to the principal address used by the Customer in correspondence;

(b) No shipment can be made until all the terms and conditions set out in the relevant letter of credit have been accepted by Offshore Electronics.

(c) Offshore Electronics assumes no responsibility for placing valuation upon any shipment unless specifically requested to do so by the Customer.

(III) The Customer shall obtain all import licences and other necessary authorisations required for the transit of the goods to and into the country of destination and shall pay all customs and import duties on the goods wherever levied outside the United Kingdom. Failure to obtain such documents shall not entitle the Customer to cancel the contract.

12. Force Majeure

A: Neither party shall be liable for breach of this contract if and to the extent that fulfilment of a term or condition hereof has been prevented, hindered or delayed by force majeure as defined in paragraph B below, and in such event the time for fulfilment of such a term shall be extended during the operation of force majeure. In the event that force majeure prevents completion of the goods for the Customer. Offshore Electronics shall have the right to deliver the goods as far as they are completed to the Customer and claim payment on a quantum meruit basis.

B: The expression “force majeure” shall mean strikes, lock outs and any event or circumstances beyond the immediate control of either party, including without prejudice to the generality of the foregoing trade disputes, accident to plant or machinery, shortage of any material, riots, civil commotion, war national or international, emergency, destruction or damage due to natural forces, fires, explosions, and compliance with orders or requests of any national or local authority.

13. Insolvency, Default ETC.

A: If Offshore Electronics receives information from which it appears that the Customer may be unable to pay its debts, Offshore Electronics will be entitled to demand security prior to delivery either by payment in cash or by bank guarantee or otherwise, notwithstanding any terms of payment previously agreed and in that the Customer is unable to provide such security Offshore Electronics shall be entitled to withdraw from the contract without liability.

B: Offshore Electronics may by notice in writing to the Customer terminate any contract forthwith if:

(i) The Customer shall commit any breach of any of the terms (including without limitation terms concerning the time for payment of the purchase price) of that or any other contract with Offshore Electronics and on its part to be observed or performed provided that if such breach is remediable that Offshore Electronics has previously given to the Customer notice thereof and the same has not been remedied within seven days thereafter.

(ii) the Customer compounds with or negotiates for any composition with its creditors generally or permits any judgement against it to remain unsatisfied for seven days;

(iii) being individual, the Customer shall die or have a receiving order made against him or commit any act of bankruptcy or be declared “en desastre”

(iv) being a company, the Customer shall have called any meeting of its creditors or any receiver, administrator, administrative receiver or liquidator shall have been appointed in relation to the Customer’s affairs or any of its assets or be declared “en desastre”

C. In the event of termination

(i) the Customer shall forthwith on demand deliver to Offshore Electronics any goods which are in the possession or control of the Customer and the property in which remains with Offshore Electronics, and in default thereof Offshore Electronics shall be entitled to repossess the same and for such purpose to enter into and upon the premises of the Customer without being liable for any damage caused thereby, and the Customer shall indemnify Offshore Electronics from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising:

And

(ii) Offshore Electronics shall be entitled by notice in writing to the Customer to declare (and there shall forthwith become) immediately due payable any amounts outstanding from the Customer to Offshore Electronics under that or any other contract and all such amounts shall bear interest at the rate set out in clause 3 above calculated from the date of the notice until actual payment as well after as before any judgement.

D. The provisions of paragraph B and C of this clause and the exercise by Offshore Electronics of its rights thereunder are without prejudice to any other rights of Offshore Electronics.

14. Severance

These conditions shall apply so far as they shall be held to be lawful and enforceable. If any condition or part of a condition shall be held to be unlawful and enforceable then these conditions shall be read and construed as if such condition or part were omitted.

15. Law

These conditions and every contract connected therewith shall be subject and construed in accordance with the laws of England and the Channel Islands. Any claim or dispute arising therefore shall be subject to the jurisdiction of or determined by the appropriate court.