

BUSTEC PRODUCTION LIMITED

GENERAL TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 **Company:** Bustec Production Limited.
- 1.2 **Contract:** The Customer's order, once accepted by the Company.
- 1.3 **Customer:** The person, firm or company to whom a Quotation is addressed or whose order the Company accepts.
- 1.4 **Design:** Foundation technology flowing from accumulated Company know-how.
- 1.5 **Development:** The application of Design to create production information including tooling, patterns, test software, schematic circuits, parts lists and all parts and information required to produce the Goods.
- 1.6 **Goods:** All articles sold to the Customer, including hardware, software, documentation and prototypes.
- 1.7 **Materials:** Parts purchased from suppliers for incorporation into Goods.
- 1.8 **Price:** Quotations are "Ex Works" and exclusive of VAT and carriage. Insurance costs shall be borne by the Customer where necessary. The Price shall be adjusted to account of any increase in costs incurred by the Company as a result of any permitted variation, or from any loss incurred by a suspension of work resulting from a fault of the Customer.
- 1.9 **Quotation:** A document that sets out the Price, delivery estimates and any other special conditions, terms, requirements or agreements. Quotations are valid for 30 days unless otherwise stated but the Company retains the right to vary, amend or modify Quotations. Errors and omissions are excluded at all times and invalidate the Quotation.
- 1.10 **Sales Specification:** A document that sets out the electrical, mechanical, environmental, health and safety criteria and/or performance of the Goods.

2. GENERAL CONDITIONS

- 2.1 All orders are accepted subject only to these General Terms and Conditions of Sale.
- 2.2 No variations to these General Terms and Conditions of Sale are permitted, unless expressly authorised in writing by a director of the Company. No other person is authorised to accept, confirm or vary any order nor make any representation, promise or warranty on behalf of the Company.
- 2.3 Conflicting provisions of the Customer's terms and conditions shall not apply, even if not expressly opposed by the Company.
- 2.4 Any provision of these General Terms and Conditions held by a court to be invalid or unenforceable, in whole or in part, shall be deemed severable from the rest, which shall remain, valid and binding.

3. PAYMENT

- 3.1 Unless otherwise agreed in writing, payment terms for catalogue product orders are 30 days from date of invoice subject to status.
- 3.2 Payment terms for all non catalogue orders, bespoke developments, custom engineering or integration orders are: 50% payable with order, 40% on delivery and 10% on acceptance unless otherwise agreed in the contract or in writing.
- 3.3 Interest will be charged on all overdue accounts at the rate of 5 per cent over the Allied Irish Bank Minimum Lending Rate being in force at the time.
- 3.4 Payment for export sales shall be made at Customer's expense as shown on the Export Quotation Form either: -
 - (a) net Cash against irrevocable letter of credit in favour of Allied Irish Bank (AIB), PO Box 12, 107-108 O'Connell Street, Limerick, Ireland, Sort Code 93-52-47; or
 - (b) by telegraphic transfer in Euro (€) to the Company's Account Number 03079-076 with Allied Irish Bank (AIB), PO Box 12, 107-108 O'Connell Street, Limerick, Ireland, Sort Code 93-52-47.
- 3.5 Payment shall be deemed to have been made only when the Company is able to dispose of the invoiced amount without any reservation for repayment.
- 3.6 The Customer may set off only such claims which are uncontested or adjudicated against payments due to the Company.
- 3.7 If there is reasonable doubt as to the Customer's solvency or credit standing the Company may, without prejudice to any of its rights and remedies, call for immediate payment of all outstanding amounts and demand advance payment for outstanding deliveries.

4. DELIVERY AND RISK

- 4.1 Unless otherwise specified in the Company's Quotation or tender, the Price excludes carriage and shipment.
- 4.2 Shipment, where specified will be at Customer's risk and in its order by any method of transport available to the Company. Unless otherwise agreed in writing, the Company shall arrange for shipment to the

premises specified by the Customer in the order. Insurance is only effected when it is demanded by written order and it is charged to the Customer.

- 4.3 Subject to Condition 7, the risk in the Goods shall pass to the Customer upon delivery, which shall be deemed to have taken place when the Goods are loaded onto the tailboard of the delivery vehicle.
- 4.4 Any time or date for the despatch or delivery of Goods or for the completion of work, whether specified in the Company's Quotation or otherwise given by the Company shall be taken as an estimate made by the Company in good faith but shall not be binding upon the Company, either as a term of the Contract or otherwise. In no circumstances shall the Company be liable for any loss or damage sustained by the Customer in consequence of failure to deliver within such time or by such date.
- 4.5 The Company may deliver the Goods in instalments and invoice the Customer as if each instalment comprised a separate Contract upon the terms of these General Terms and Conditions.
- 4.6 If delivery of the Goods is delayed through any act or omission of the Customer the Company may put the Goods into storage at the Customer's risk and make a charge to the Customer equal to 2 per cent per month or part thereof of the invoice price of the Goods. In this event delivery of the Goods shall be deemed to have taken place when the Goods have been put into storage.
- 4.7 Where the Company has undertaken to install the Goods, the Customer shall at its expense provide all such installation space, environment, power points and other facilities, as the Company shall at any time reasonably require and any failure to do so shall be deemed as a failure to accept delivery.
- 4.8 If the Company is responsible for any delay for delivery, the Customer may either cancel the Contract after expiration of a reasonable extension of the delivery time granted in writing, or claim damages up to a maximum aggregate amount not in excess of 5% of the value of the undelivered Goods, PROVIDED THAT the Customer can prove that he suffered such loss as a result of the delay and PROVIDED FURTHER THAT ANY CLAIM IN EXCESS OF THE AMOUNT SET FORTH IN THE PRECEDING SENTENCE IS EXPRESSLY EXCLUDED.

5. VARIATIONS

- 5.1 Agreed delivery schedules shall not be varied by either party without the prior written consent of the other and if varied the Contract Price shall be adjusted in accordance with the following rules, unless otherwise agreed.
- 5.2 On receipt of an amendment to contracted order which re-schedules all or part of the contracted order, the Company will within 2 weeks advise the Customer of the Price for re-schedule. If the advised Price or an amended form is not agreed by the end of the third week from amendment receipt, then the original Contract remains unchanged. Maximum period of original contracted order schedule delay is 6 months. The order will lapse thereafter and the provisions contained in 5.3 below will apply. The Company will calculate the re-schedule charge in accordance with the following scale of charges as a percentage of Goods contracted order price as follows: -
 - (a) finished Goods and work in progress within 3 months of amendment: at the rate of 2 per cent per month;
 - (b) work in progress beyond 3 months of amendment and materials on order: at the rate of 1 per cent per month.
- 5.3 On receipt of an amendment to contract order, which cancels all or part of the order, the Company will within 2 weeks halt production of all Goods, which are the subject of the cancellation. The Company will then count and price all material, work in progress and finished Goods. The Company will, where possible, cancel the supply of materials. The value of such materials cancelled less any cancellation charges will be reduced by 15 per cent and taken into account in the scale of charges below. The Company will calculate the price of the cancellation in accordance with the following scale: -
 - (a) Finished goods - at contracted price;
 - (b) Work in progress - at 90 per cent of contracted price;
 - (c) Materials in Kits - at Kit cost + 30 per cent;
 - (d) Suppliers/sub contractors charges - at invoice price + 15 per cent.

A single charge is then invoiced covering the cancellation or required months of delay. Additionally, there will be an administrative charge of 250 Euro or 2 per cent of order value (re-scheduled or cancelled) whichever shall be the greater.

6. LOSS OR DAMAGE IN TRANSIT

- 6.1 Where the Price includes carriage and shipment, the Company will repair or at its option replace free of charge within a reasonable time all Goods damaged or lost in transit, provided separate notices, in writing, are given both to the carriers and the Company within three days of receipt of the Goods followed by a completed claim in writing within five days of receipt of the Company's advice note. Where the Goods are accepted from the Carrier without being checked the Carriers Delivery Book must be signed, "NOT EXAMINED".
- 6.2 All Goods the subject of any claim for damage in transit or shortage in delivery shall be preserved intact as delivered for a reasonable period and at least seven working days after making the claim within which time the Company shall be at liberty to attend the Customer's works and investigate the complaint. The

- Customer shall not dispose of any damaged Goods without the Company's agreement.
- 6.3 Compliance by the Customer with each and every requirement of this condition 6 shall be a condition precedent to any right the Customer has to make a claim and any breach shall release the Company from any liability or obligation in respect of the claim or to investigate it. The acceptance by the Company of any belated notice or claim, or any action taken by the Company thereon, shall not constitute any waiver by the Company and shall be without prejudice to the Company's right to reject the claim on the grounds of non-compliance with this condition.
- 7. PACKING**
All packing, skips, drums and other packing materials marked "PROPERTY OF BUSTEC PRODUCTION LIMITED" or defined in the Contract are to be so returned to the Company in good condition, carriage paid, within one month, if not so returned they will be charged for.
- 8. LIABILITY FOR ACCIDENTS AND DAMAGE**
- 8.1 If the Company's personnel, agents or sub-contractors are working on the Customer's site for the purpose of the contract then the Company will indemnify the Customer against direct damage or injury to the Customer's property or person or that of others occurring during the course of such work caused by the negligence of the Company's personnel agents or sub-contractors; PROVIDED HOWEVER THAT THE COMPANY'S LIABILITY AND THE CUSTOMER'S RIGHTS TO SUCH INDEMNIFICATION ARE SUBJECT TO THE LIMITATIONS IN THE PROVISIONS OF CLAUSE 14 BELOW AND ARE FURTHER LIMITED TO THE EXTENT OF THE INSURANCE CARRIED BY THE COMPANY EXCEPT FOR LIABILITY FOR DEATH OR PERSONAL INJURY.
- 9. INSURANCE**
- 9.1 The Customer at the request of the Company shall take out and maintain insurance to take effect after delivery and/or whilst the Company is on site, to include but not limited to third party liability, accidental damage and fire and shall procure the endorsement of the Company as joint insured with full waiver of subrogation.
- 10. SAFETY**
Some of the Goods supplied by the Company may require additional safety covers and precautions, such Goods are labelled. However, because human error can occur, the Customer should acquaint its staff with any dangers and provide the necessary covers and precautions. Advice may be freely sought from the Company, if as a result of the coming into force after the date of the Company's tender or where the Company has made no tender, the acceptance of the Customer's order of any Act, Order, Regulation or By-Law or the discovery of any new health or safety requirement or precaution or for any other reason, additional protective or safety equipment or work should be required, the cost thereof will form an extra to the tender or contract Price.
- 11. TITLE TO THE GOODS**
- 11.1 The Goods shall remain the sole and absolute property of the Company until such time as the Customer shall have paid to the Company the agreed Price together with any other monies due to the Company.
- 11.2 The Customer acknowledges that the Customer is in possession of the Goods solely as bailee for the Company, and until such time as the Customer becomes owner of the Goods the Customer undertakes to store them separately on his premises in a manner, which makes them readily identifiable as the Goods of the Company, and to furnish the Company with all relevant information and support the Company in securing its title to the Goods. The Customer shall notify immediately the Company if third parties assert claims, liens or charges which endanger the Company's title to the Goods.
- 11.3 The Customer's right to possession of the Goods shall cease if it, not being a company, commits an available act of bankruptcy or is in breach of the Contract or of any of these Terms and Conditions, or if it being a company is in breach of the Contract or of any of these Terms and Conditions or is unable to pay its debts for the purposes of the insolvency legislation applicable to it or has a petition presented for its winding up or passes a resolution for voluntary winding up or has a Receiver, Administrative Receiver or Administrator appointed over any of its assets or enters into a voluntary arrangement with its creditors the Company may for the purpose of recovery of its Goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- 11.4 If reservation of title is not permitted by the law of the country to which the Goods are shipped the Company may demand for other equivalent security for outstanding payments, e.g. security interest, charge or guarantees.

12. RIGHTS TO SOFTWARE

Any software contained in the Goods is covered by the terms of the Company's software license agreement. Unless otherwise agreed in the software license agreement or in the Contract the customer is granted a non-exclusive, non-transferable license to use and display the copy of the software programme and of subsequent amendments on a single computer (CPU) in a single location and the Company remains the sole owner of the copyright.

13. GENERAL DESCRIPTIVE MATTER

All specifications, drawings and particulars or weights and dimensions submitted by the Company are approximate only and intended to give a general idea of the Goods described therein and shall not form part of the Contract. Unless supplied or approved, the Company undertakes no responsibility for sites or foundations or for any framework or support for machinery or for compliance with any local by-laws or statutory regulations or for the fulfilment of any special requirements the Customer is bound to observe.

14. PERFORMANCE

14.1 Unless any performance figures, tolerance or characteristics have been specifically warranted by the Company, in writing, in the form of its Sales Specifications, the Company shall be under no liability for failure to attain such figures. If performance figures, tolerances or characteristics obtained on any test provided for in the Contract are outside the acceptance limits the Customer will be entitled to reject the Goods, but before rejecting the Goods or taking legal steps to claim breach of contract the Customer will give the Company reasonable time and opportunity to rectify its performance. Save insofar as the Customer's stipulations are based on advice given by the Company in writing, the responsibility for ensuring that Goods are sufficient and suitable for its purposes rests upon the Customer.

14.2 Notwithstanding Clause 14.1 hereof, any Contract for Goods specified as subject to prototype approval is accepted only on the basis that it is conditional upon the production by the Company of a prototype which meets the Customer's requirements and if such Goods cannot be produced in the period specified in the Contract either party may forthwith cancel the Contract without any liability save that the Company shall be entitled to payment for the work it has done on a time and materials basis at its rates prevailing at the time of cancellation.

14.3 Unless specifically agreed by the Company, in writing, no performance inspection ("pre-acceptance") shall be undertaken prior to shipment of the Goods to the Customer. Any request for pre-acceptance must be made, in writing, prior to the acknowledgement of the Contract and accepted by the Company in writing. The Company reserves the right to make charges for pre-acceptance work not specifically agreed to prior to Contract acknowledgement at the rates prevailing at the time of pre-acceptance. The Company reserves the right to refuse any pre-acceptance requests made after Contract acknowledgement.

14.4 If the Customer waives an agreed pre-acceptance or does not attend the pre-acceptance the inspection and tests conducted by the Company shall be deemed to be acceptance. The Company may charge the Customer all additional costs resulting from a delay of pre-acceptance work for reasons beyond the Company's reasonable control.

14.5 In any event the Goods shall be deemed to be accepted by the Customer when they are in service.

14.6 Acceptance may not be refused for minor defects without relief to the Company from any obligation to remedy such defects.

15. SAMPLES

The Customer is liable to pay the full price of any samples supplied by the Company to the Customer. The charge will be waived if the samples are returned in full working order and in reasonable condition within one month of delivery to the Customer PROVIDED ALWAYS THAT

- (a) the Customer has carried out such acts of maintenance as the Company specifies, and
- (b) the Customer ensures that only skilled operators fully trained in the use of the same use the samples, and
- (c) the Customer does not allow anyone to tamper or interfere with the samples.

16. WARRANTY AND LIABILITY

16.1 Any defects which under proper use appear in the Goods within a period of 12 months after delivery and are due to faulty materials, workmanship or design (other than a design provided or specified by the Customer) shall be made good by the Company, either by repair or at the Company's option by replacement, provided the Company is notified in writing within seven days of the date of such defects appearing and the Goods or the defective parts thereof are returned to the Company or where in the Company's sole discretion this is not practical are made available for inspection by the Company. The Customer shall pay the cost of carriage of the returned goods or parts, the Company will deliver replaced Goods or parts to the Customer free of charge.

16.2 THE COMPANY'S LIABILITY UNDER THIS CONDITION SHALL BE IN LIEU OF ANY OBLIGATION IMPLIED BY LAW AS TO THE QUALITY OR FITNESS FOR ANY PURPOSE OF THE GOODS AND SAVE AS PROVIDED IN THIS CONDITION THE COMPANY SHALL BE UNDER NO LIABILITY,

WHETHER IN CONTRACT, TORT OR OTHERWISE, IN RESPECT OF ANY DEFECTS IN THE GOODS OR FOR ANY INJURY, LOSS OR DAMAGE RESULTING FROM SUCH DEFECTS OR FROM ANY WORK DONE IN CONNECTION THEREWITH.

WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING EXCLUSION THE COMPANY SHALL NOT IN ANY CIRCUMSTANCES BE LIABLE FOR ANY CONSEQUENTIAL LOSS OR DAMAGE SUFFERED BY THE CUSTOMER, INCLUDING ANY LOSS OF USE, LOSS OF CONTRACTS OR LOSS OF PROFITS.

THE COMPANY SHALL BE UNDER NO LIABILITY FOR THE NEGLIGENCE OF THE COMPANY, ITS EMPLOYEES, SERVANTS, AGENTS, SUB-CONTRACTORS OR OTHERS, EXCEPT LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE.

- 16.3 Notwithstanding the foregoing, the Company shall be under no liability:-
- (a) in respect of any defects which appear under proper use within a period of 12 months after delivery if the Customer fails to adhere strictly to the terms of payment provided for or referred to herein; or
 - (b) if the Goods have not been used or maintained reasonably or properly by skilled operators and with materials approved by the Company; or
 - (c) if the defective Goods or parts thereof have not been despatched within 14 days of notification of the defect to the Company at the expense of the Customer; or
 - (d) if the Goods were sold as second-hand or reconditioned or ex-demonstration; or
 - (e) when the Customer has not given to the Company written notice of loss or damage in transit within 7 days after the Company's advice note, invoice or other notification of the despatch of the Goods in case of non-delivery or within 7 days after delivery of the Goods in any other case and where the Goods are transported by an outside freight carrier the Customer has not complied in all respects with the freight carrier's conditions of carriage by notifying claims for loss or damage in transit; or
 - (f) if any seal or identification label attached to the Goods is removed, broken or tampered with.
- 16.4 Any repairs or adjustments not performed or authorised in advance by the Company shall cancel the warranty and any guarantees and release the Company from further responsibility.
- 16.5 In the case of Goods not of the Company's manufacture the Customer is entitled only to the benefit of any guarantee or warranty given to the Company in respect thereof insofar as the Company is entitled to assign the same. In any event the Company's liability shall not exceed the amount recovered by the Company from the manufacturer concerned.
- 16.6 Any software contained in the Goods is covered by the terms of the Company's software license agreement and any software forms part of this warranty only to the extent of the limitations and liabilities contained therein. Only software defects which can be reproduced at any time are considered defects covered by warranty.
Any claim based on data loss or alteration is admitted only if the Customer has performed a data back-up in a machine-readable form at intervals adequate to the application concerned, but not later than at the end of the day on which the software was used which permits the restoration of all data lost or altered with reasonable expenditure.
- 16.7 The Company's total liability for any one claim shall not exceed the contract price.

17. DESIGN OWNERSHIP AND COPYRIGHTS

- 17.1 Unless otherwise expressly agreed in writing the Company owns all rights to the Design, tooling, Goods manufacture and future Developments. The Company's rights will not be reduced in any way by the Customer's payment of Design, Development, engineering, software tooling or any other charges in whole or in part.
- 17.2 All estimates, Designs, drawing plans or models prepared by the Company remain the Company's property and are copyright. They must not in whole or in part be copied or otherwise made use of by or be copied to any other party, without the Company's prior written consent.

18. TRADEMARKS

Bustec[®] and ProDAQ[®] are registered trademarks of the Company. The Customer may not change the appearance of the Goods to allow him or any other third party to appear to be the manufacturer of the Goods and shall not remove or allow to be removed the registered trademarks, or affix his own trademarks to the Goods.

19. PATENTS

- 19.1 Should claims for infringement of industrial property or copyright (the "Rights") be made against the Customer arising from his use of Goods delivered by the Company the Company will defend the Customer against such claims and pay costs and/or damages either adjudicated or allowed by the Company to the owner of such Right; PROVIDED THAT the Customer notifies the Company immediately in writing of any such claim and that all defences and measures to reach a settlement out of court are reserved by the Company. Subject to these conditions the Company will use its best endeavours to obtain the right to continue to the use of the Goods. In the event this is not possible by any reasonable means, the Company shall at its sole discretion and expense either modify, or replace the Goods, so as to remove the infringement or take the Goods back and refund the purchase price after adjustment for the age of the Goods at the time. Any liability by the Company out of any such claim is limited to the purchase price of the Goods. ANY FURTHER OR OTHER RIGHT, CLAIM AND REMEDY OF THE CUSTOMER ARISING OUT OF SUCH INFRINGEMENT ARE EXPRESSLY EXCLUDED.
- 19.2 The Customer shall indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable in the supply of any Goods or in the execution of any works in accordance with Customer's specification involving any infringement of a registered design, patent or copyright or other industrial property.

20. LICENCES

Any license required to enable the Customer to acquire or the Company to sell or supply to the Customer shall be obtained by the Customer.

21. EXPORT LICENCE

If the Goods are subject to an export license and such license is refused the Contract shall be deemed void.

22. SUB-CONTRACTING

The Company reserves the right to assign or sub-contract the Contract or any part thereof.

23. TERMINATION

- 23.1 Without prejudice to other remedies and accrued rights the Company shall have the right forthwith to terminate the Contract and to claim for any resulting losses or expenses if the Customer commits a breach of this or any other Contract with the Company and fails to remedy the breach within a reasonable time of a written notice to do so.
- 23.2 If for any reason the Company shall receive directions by a Government Department as to the disposal of the Company's Goods of the type, kind or category within the Contract and in the Company's opinion such directives shall prevent or hinder the fulfilment by the Company of the Contract then the Company may at any time, by notice in writing to the Customer, cancel the Contract in whole or in part.

24. INSOLVENCY OF THE BUYER

If the Customer (being a company) has a petition presented for its winding-up or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver or administrative receiver or administrator appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law then (i) the Company has: -

- (a) a lien on the Goods together with a general lien in any other goods belonging to the Customer so long as the Company is in possession of them;
- (b) a right of stoppage in transit;
- (c) a right of resale, and
- (d) a right to suspend further deliveries of Goods;

and (ii) the Company shall be entitled to treat the Contract as repudiated by the Customer and to invoice for any work in progress at the date of repudiation.

25. FORCE MAJEURE

If the performance of the Contract or any obligation under it is prevented, restricted or interfered with by reason or circumstances beyond the reasonable control of the party obliged to perform it, the party so affected upon giving prompt notice to the other party shall be excused from performance to the extent of the prevention, restriction or interference but the party so affected shall use its best efforts to avoid or remove such causes of non-performance and shall continue performance under the Contract with the utmost despatch whenever such causes are removed or diminished.

26. ASSIGNMENT

The Quotation or Contract to which these are the Terms and Conditions of Sale is personal to the Customer who shall not, without prior written consent of the Company, assign any rights or obligations hereunder to any other person, firm or company.

27. CONFIDENTIALITY

Except with the Company's prior written consent, the Customer shall not use (other than for the purposes of fulfilling the Contract) or disclose to any other person, any information relating to the Goods or to the Contract. The Customer shall ensure that its employees enter into similar undertakings with the Customer and shall indemnify the Company against all losses, damage or expenses arising out of a breach of this clause.

28. WAIVER

The waiver by the Company of any breach of any of these Terms and Conditions of Sale shall not in any way prejudice or affect the subsequent enforcement of the term or condition and shall not be deemed a waiver of any subsequent breach thereof.

29. NOTICE OF BREACH

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified in the Contract, Quotation, tender or acknowledgement of order or such other address as that party may from time to time notify in writing and shall be deemed to have been served if sent by post 48 hours after posting.

30. LEGAL CONSTRUCTION

The laws of Ireland shall govern the Contract. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall not apply.