

Cyclops Electronics Ltd Conditions of Trade

1 Interpretation

1.1 In these Conditions the following words shall have the following meanings:

"the Company"	Cyclops Electronics Limited whose principal place of business is at Link Business Park, Osbaldwick, York, YO10 3JB
"the Customer"	the person, firm or company who purchases the Goods and/or Services from the Company
"Contract"	the contract between the Company and the Customer incorporating these Conditions
"Conditions"	the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between the Company and the Customer
"Goods"	any goods agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them)
"FOB"	where the trading arrangement in the Contract is designated as Free on Board under which the Buyer will be responsible for delivery costs, insurance risks and import taxes relating to the Goods once the Goods have been delivered to a specified air or sea port
"Intellectual Property"	all trade marks, patents, design rights and other intellectual property rights associated with the design, manufacture, packaging, application, use or installation of the Goods or Services, whether registered or unregistered
"Services"	any services, including services rendered in the preparation of the Goods, supplied by the Company to the Customer
"Working Day"	Monday to Friday inclusive between 9.00 a.m. and 5.00 p.m. in each week excluding any UK Bank or Public Holiday

1.2 Words in the singular include the plural and vice versa

1.3 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

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

2 Application of Conditions

- 2.1 These Conditions shall govern each Contract in respect of each sale made by the Company of Goods and/or Services rendered to the Customer by the Company to the exclusion of any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document and the Customer waives any right to rely on any such terms or conditions.
- 2.2 The formation, existence, performance, validity and all aspects of the Contract (incorporating these Conditions) shall be governed by English law, irrespective of the residence domicile or principal trading address of the Customer and wherever the address to which the Goods are supplied or at which the Services are rendered, and the parties submit to the non-exclusive jurisdiction of the English courts. For the avoidance of doubt the Customer shall be bound by the relevant English export regulations relating to Goods sold to the Customer.
- 2.3 If any one or more of the provisions of these Conditions shall be adjudged by any Court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable, unfair or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability, unfairness or unreasonableness be deemed severable as regards that or those provisions and the remaining provisions of these Conditions together with the remainder of such provision or provisions shall continue in full force and effect.
- 2.4 The Contract incorporating these Conditions shall constitute the whole of the agreement between the Company and the Customer in respect of the subject matter of the Contract.
- 2.5 The Customer acknowledges that the Customer has not entered into the Contract with the Company as a result of any representation or warranty, oral or written made by or on behalf of the Company.

3 Orders

- 3.1 Each order for Goods and/or Services by the Customer to the Company shall be deemed to be an offer by the Customer to purchase the Goods and/or Services subject to these Conditions.
- 3.2 Orders for the Goods and/or Services shall be in writing and no contract will come into existence until confirmed in writing by the Company or, if the Company, at its discretion, accepts a telephoned order against the Customer's Official Order Number which acceptance shall then be confirmed by the Company in writing, or, if earlier than either of the foregoing, the Company delivers the Goods or begins to render performance of the Services to the Customer.
- 3.3 Any quotation given by the Company is given on the basis that no Contract will come into existence until the Company despatches a written confirmation of order to the Customer or, if earlier, the Company delivers the Goods or begins to render performance of the Services to the Customer.
- 3.4 The Customer shall be responsible to the Company for ensuring that the terms of its order are complete and accurate and for giving the Company any necessary information within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.5 No variation to these Conditions or to any order once accepted by the Company shall have any effect unless expressly agreed in writing and signed by a duly authorised representative of the Company. In the event of the Company agreeing to vary any order the costs of all additional works done by the Company in respect of such variation shall be paid by the Customer either at the date of such variation or at the date of delivery of the Goods or supply of the Services whichever the Company shall decide.
- 3.6 Prior to entering into any Contract the Company may supply to the Customer drawings, technical specifications, catalogues and other matter based upon information supplied by the Customer to assist the Customer in planning its requirements. All such information is supplied for the sole purpose of giving an approximate idea of the Goods and/or Services described in it. Any such information supplied shall not form part of the Contract and the Company accepts no liability in respect of the accuracy or suitability for the Customer's purpose of any such information supplied and the sale shall not be a sale by sample.
- 3.7 It is the Customer's responsibility to ensure that all information given by it and items supplied to it are accurate and to the Customer's satisfaction.
- 3.8 The Company may at its absolute discretion refuse to accept any order from any Customer or to enter into a Contract to supply any Goods or Services to any Customer and in such event shall notify such Customer in writing of its decision not to supply in which event the Customer shall have no claim against the Company for any loss arising as a result of the Company's refusal to supply.
- 3.9 Unless otherwise agreed in writing by the Company no Goods supplied by the Company to the Customer are on sale or return or sample basis.
- 3.10 Once accepted by the Company orders may not be cancelled by the Customer unless, in exceptional circumstances, at the Company's discretion, and provided the request for cancellation is made in writing by the Customer and received by the Company within 10 (ten) days of acceptance of the order by the Company, the Company accepts in writing a request from the Customer to cancel an order. In these exceptional circumstances any deposit paid by the Customer will be refunded in full less a £50 administration fee.

4 Price and Payment

- 4.1 Unless otherwise agreed in writing, the price for the Goods and/or Services shall be the price referred to in the Company's confirmation of the order in accordance with clause 3.2 of these Conditions.
- 4.2 The price shall be exclusive of all costs or charges in relation to packaging, loading, unloading, carriage and insurance charges applied by the Company which will be added to the invoice by the Company and payable by the Customer as part of the invoice.
- 4.3 The price is exclusive of any Value Added Tax and of any other tax imposed from time to time, at the appropriate prevailing rate, the amount of which will be added to the invoice by the Company and shall be payable as part of the invoice.
- 4.4 In respect of export sales the Customer shall be responsible for complying with any legislation or regulations governing the exportation of Goods to or importation of Goods into the country of destination and for the payment of any applicable duties.
- 4.5 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as without limitation, any increase in costs incurred for whatever reason by the Company in obtaining supplies of materials or Goods, or increase in the cost of labour, materials or other costs to provide the Goods and/or Services) and which becomes effective between the date of the Company's acceptance of the order in accordance with clause 3.2 of these Conditions and the date of delivery or supply to the Customer (which shall be the invoice date) and any Goods or Services supplied shall be invoiced at the applicable price current therefore at the date of delivery or supply.
- 4.6 In the event that the Customer requests Goods and/or Services to be delivered or rendered in a shorter period of time than that originally agreed the Company and the Company, at its absolute discretion, agrees to such shorter time the Company may employ persons outside normal working hours to meet the Customer's requirements (including, where deemed necessary by the Company sub-contractors or temporary staff) and all additional charges incurred thereby shall be paid by the Customer in addition to the quoted price.
- 4.7 The Company shall, subject to its rights to pre-payment under clause 4.8, be entitled to invoice the Customer for the price of the Goods and/or Services on or at any time after the date of delivery of the Goods or supply of the Services and, unless otherwise agreed in writing by the Company, payment by the Customer shall be due immediately on receipt by it of the Company's invoice. The price shall be payable in pounds sterling and time for payment shall be of the essence.
- 4.8 At the Company's discretion in respect of any order the Company may request the Customer to pay all or any part of the price thereof in cleared funds prior to the Company supplying any Goods or Services. If the Customer shall not make such prepayment as requested the Company shall be under no liability to supply any Goods or Services to the Customer.
- 4.9 All sums payable to the Company under the Contract shall be made by the Customer without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.
- 4.10 There will be no discounts on invoices unless specifically agreed between the Company and the Customer and further in the event of any invoice upon which discount has been agreed not being paid by its due date then discount will be forfeit.
- 4.11 Any sums due under any invoice shall bear interest at the rate of 5% per annum over Lloyds Bank Plc Base Rate on the value of the invoice from the date they are due for payment until the date of actual payment, such interest to be calculated on a daily basis.
- 4.12 In the event the Company employs solicitors or other agencies or takes legal action against the Customer to collect all or any sums due from any customer to the Company the costs so incurred by the Company shall be paid by the Customer such costs not being limited to those recoverable under a Court action.

5 Delivery and Risk

- 5.1 Delivery of the Goods shall be effected and risk in the Goods shall be transferred in accordance with the trading arrangements applicable to the Contract. Where the Goods are collected from the Company's premises by or on behalf of the Customer delivery shall take place and risk shall be transferred to the Customer on collection. Where delivery of the Goods is made by way of delivery arrangements to a named delivery point then delivery shall take place and risk shall pass once the Goods are delivered to the named delivery point named in the Contract or otherwise agreed between the Company and the Customer. The Customer shall pay to the Company such insurance and other charges as are payable in accordance with clause 4.2. The Customer shall be responsible for insuring the Goods to their full value on passing of the risk.
- 5.2 Where delivery of the Goods is to be made for export by way of FOB the air or sea port of shipment, unless otherwise agreed in writing between the Company and the Customer, the Company shall be under no obligation to give notice under section 32 (3) of the Sale of Goods Act 1979.
- 5.3 Any date specified by the Company for the delivery of the Goods or beginning of rendering of the Services is an estimate only and time for delivery shall not be made of the essence by notice. If no date has been specified delivery shall be within a reasonable time.
- 5.4 The Company shall not be liable for any shortfall in the delivery of the Goods unless written notice is given to the Company within 3 (three) Working Days of delivery.
- 5.5 Any liability of the Company for non-delivery or shortfall in the delivery of the Goods shall be limited to the Company delivering or making up such shortfall within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods. The Company shall not be liable for any loss (including but not limited to loss of profit and consequential loss), costs, damages, charges or expenses caused directly or indirectly by any delay or shortfall in the delivery of the Goods and/or Services.

5.6 If for any reason the Customer will not accept delivery of any of the Goods and/or supply of the Services when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, risk in the Goods will pass to the Customer and the Company may store them until actual delivery and the Customer will be liable for all related costs and expenses (including without limitation storage and insurance). If the Customer continues for 30 days after the said date of readiness to refuse delivery or supply of the Services or the Company remains unable to deliver due to the aforesaid failure of the Customer to provide appropriate instructions, documents, licences or authorisations the Company may raise an invoice to the value of the Goods or Services so ready to be supplied and the Customer will pay to the Company the invoice price in addition to the related costs and expenses referred to aforesaid which will continue to be payable until the actual date of delivery.

6 Title

- 6.1 Ownership of any Goods supplied by the Company to a Customer shall not pass to the Customer until receipt by the Company in cash or cleared funds of payment in full for the Goods.
- 6.2 Until such time as payment for the Goods or any Services rendered has been received in full by the Company the Customer shall
- 6.2.1 hold such Goods on a fiduciary basis as the Company's bailee;
 - 6.2.2 store the Goods (at no cost to the Company) separately to other goods of the Customer or any third party in a way that they remain readily identifiable as the Company's property;
 - 6.2.3 not destroy, obscure or obscure any identifying mark or packaging on or related to the Goods;
 - 6.2.4 maintain the Goods in satisfactory condition insured for their full price against all risks and hold the proceeds of insurance on trust for the Customer and not mix them with any other money nor pay the proceeds into an overdrawn bank account.
- 6.3 The Customer may resell Goods which come into its possession before ownership has passed to it provided that any such sale shall be in the ordinary course of business and that the Customer accounts to the Company for the proceeds of sale of the Goods as payment to the Company of the price owing by the Customer to the Company. If such proceeds are not sufficient to enable the Customer to pay to the Company the full price outstanding the Company shall remain entitled to recover payment from the Customer of the outstanding amount together with any interest and costs as referred to in clause 4.11 and 4.12.
- 6.4 The Company shall be entitled to recover payment for the Goods and/or Services notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.5 In the event of any Goods or Services not being paid for in full by the date upon which payment therefor is due the Company shall have power to recover possession of the Goods or any other goods supplied by the Company to the Customer and retained by the Customer and the Customer hereby expressly grants an irrevocable licence to the Company, its agents and employees at any time to enter upon any premises upon which such goods are located to recover possession thereof.
- 6.6 On termination of the Contract, howsoever caused, the Company's rights under this clause 6 shall remain in effect.

7 Warranty

- 7.1 The Company warrants (subject to the other provisions of these Conditions) that at the time of delivery the Goods will comply with any specification given by the Company for the Goods. The Company insofar as it is able so to do will pass on to the Customer the benefit of any manufacturer's warranty on any Goods supplied by the Company but will not accept liability for the failure of the Goods to meet the manufacturer's specification.
- 7.2 The Company shall not be liable for a breach of the warranty in Condition 7.1 if:
- 7.2.1 the Customer does not give written notice of any defect in the Goods, or part thereof to the Company within 3 (three) Working Days of delivery;
 - 7.2.2 the Company is not given a reasonable opportunity of examining the Goods and the Customer (if asked to do so by the Company) does not return the Goods, or the part(s) claimed to be defective, to the Company's place of business for the examination to take place there. In the event of a return being requested by the Company, the Company shall have the right to charge carriage to and from the delivery location and the costs involved in the removal of the Goods, or the part(s) claimed to be defective, from the Customer's premises. In no instance shall the Customer return Goods once delivered to the Customer without prior written authority or request from the Company;
 - 7.2.3 the Customer makes any further use of the Goods after giving notice of any defect in the Goods;
 - 7.2.4 the defect arises because the Customer failed to follow any instructions of the Company as to the storage or use of the Goods or good trade practice; or
 - 7.2.5 the Customer alters the Goods or their packaging without the written consent of the Company.
- 7.3 Subject to Condition 7.2, if any of the Goods do not conform with the warranty in Condition 7.1 the Company shall at its option replace such Goods, or the defective part(s) thereof, or refund the price of the defective Goods (where this has been paid) and shall have no further liability for breach of the warranty in Condition 7.1 in respect of such Goods. For the avoidance of doubt any claim made by the Customer against the Company in respect of and arising from any damage to or defect in the Goods or the Services supplied shall be limited to the value of the defective part(s) of the Goods or Services supplied.
- 7.4 Any claim for damage to or defects in, or shortages on delivery or generally concerning the Goods supplied shall be notified by the Customer to the Company in writing within 3 Working Days of the date of delivery in default of which no claim shall arise against the Company in respect of such damage, shortage or defects

8 Limitation of Liability

- 8.1 Conditions 5, 7 and 8 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer and, notwithstanding anything to the contrary in the Contract, the Company shall not be liable to the Customer by reason of any representation or implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any loss or damages (direct, indirect, special or consequential and whether for loss of profit or otherwise and whether occasioned by the negligence of the Company, its employees or agents or otherwise) arising out of or in connection with any act or omission of the Company relating to the manufacture and supply of the Goods and/or rendering of the Services, the use, storage or resale of the Goods by the Customer or the use of the Goods by any customer of the Customer. For the avoidance of doubt no warranty is given by the Company as to the fitness of any Goods for any particular purpose or as to the quality of any Goods and the Company will not be responsible for any loss or damage of whatsoever nature and howsoever caused to the Customer (except as referred to in clause 8.2) or his property or to any third party or their respective businesses or employees as a result of any damages to or defect in the Goods supplied or the Services rendered or any use to which they are put by the Customer or any third party.
- 8.2 Nothing in these Conditions excludes or limits the liability of either party for death or personal injury caused by the negligence of either party.
- 8.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 8.4

- 8.4 Subject to Conditions 8.1, 8.2 and 8.3:
- 8.4.1 the Company shall not be liable to the Customer for economic loss, loss of profit, goodwill, business opportunity or production downtime or any type of indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and
 - 8.4.2 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Goods and/or Services the subject of the claim.
- 8.5 The Customer shall indemnify and keep indemnified the Company (i) against all actions, claims, costs, damages, expenses, judgements and liabilities of whatsoever nature suffered or incurred by the Company arising or resulting from any breach by the Customer of any terms of the Contract or arising from the unsuitable storage, handling or use of the Goods and/or unsuitable use by the Customer of any of the Services rendered by the Company to the Customer and (ii) against all actions, claims, costs, damages, expenses, judgements and liabilities of whatsoever nature arising from the acts or omissions of any third party employed by the Customer.

9 Events beyond the Company's control

- 9.1 The Company shall be entitled to defer the date of delivery or to cancel the Contract or to reduce the volume of the Goods or supply of Services without liability to the Customer if the Company is prevented from or delayed in the delivering the Goods and/or supply of Services due to circumstances beyond the reasonable control of the Company including, without limitation, earthquake; lightning; storm; hurricane; fire; explosion; failure of public services; shortages of materials; failures of the Company's suppliers to supply materials; delays in transport including shipping; strike, lock-out or other form of industrial action; acts, regulations or measures of any kind on the part of any governmental or local authority; import or export regulations or embargoes; power failure or breakdown in machinery; civil commotion, riot, act of terrorism, or war.

10 General

- 10.1 The Customer shall not assign the Contract or any part of it without the prior written consent of the Company.
- 10.2 The Company shall be entitled to sub-contract or assign the Contract or any part of it to any person, firm or company.
- 10.3 The Customer shall have no rights in respect of the trade marks and other Intellectual Property rights of the Company, in particular, but without limitation, those associated with the design, manufacture, application, installation of the Goods and rendering of the Services and the Customer hereby acknowledges that it shall not acquire any rights in respect thereof and that all such rights (and goodwill) are and shall remain vested in the Company and the Customer shall not challenge the validity of any such Intellectual Property rights.
- 10.4 The Customer shall not remove, alter or otherwise interfere with any markings on the Goods or their packaging or use any of the trade marks or other Intellectual Property of the Company or any licensor of the Company in any way which might prejudice their distinctiveness or validity or the goodwill of the Company or its licensor therein.
- 10.5 Any notice required or permitted to be given by either party to the other shall be sent to the other party in writing or by electronic mail or facsimile and confirmed in writing to the other party's 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 notice. A notice shall be deemed effective on the day it is received.
- 10.6 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 10.7 Any waiver by the Company of any breach of, or any default under any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 10.8 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 10.9 Subject to Conditions 10.1 and 10.2, nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.
- 10.10
- 10.10.1 If any claim or dispute arises under or in connection with the Contract or interpretation of these Conditions then, except where the breach relates to a late payment where the Company may follow such proceedings as it considers necessary to recover any such late payment in accordance with clauses 2.2 and 4.12, the parties will attempt to settle such claim or dispute amicably by negotiation.
 - 10.10.2 If any claim or dispute cannot be settled by negotiation within 21 days after either party has made a written offer to the other party to negotiate a settlement to such claim or dispute, the parties shall, before resorting to court proceedings, attempt to resolve the claim or dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
 - 10.10.3 If the parties have not settled any claim or dispute by mediation within 30 days from the initiation of the mediation, the dispute shall be referred to and finally resolved by the courts in accordance with Clause 2.2.