

# General Terms of Sales and Delivery of Arrow Electronics Estonia OÜ

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# GENERAL TERMS OF SALES AND DELIVERY OF ARROW ELECTRONICS ESTONIA OÜ

## 1. INTERPRETATION

### 1.1. Definitions:

'Conditions' - The standard terms and conditions of sale set out in this document (unless the context otherwise requires) including any special terms and conditions agreed in Writing and signed by the Purchaser and the Seller

'Contract' - The contract for the purchase and sale of the Goods

'Goods' - The goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions and save where inconsistent with these Conditions Goods includes Value Added Goods and Software.

'Manufacturer' - The manufacturer or the manufacturer's regional supplier of the Goods.

'Published Data' - Data in relation to the Goods published in any form including on the Internet.

'Purchaser' - The person who accepts a quotation from the Seller for the Goods or whose order for the Goods is accepted by the Seller.

'Seller' - Arrow Electronics Estonia OU

'Software' - The Software which the Seller is to supply in accordance with these Conditions.

'Value Added Goods' - Goods which have been altered or have been incorporated in other goods by the Seller before sale to the Purchaser.

'Writing' - Includes electronic data transfer, including but not limited to, e-mail, cable, facsimile transmission and comparable means of communication.

1.2. Any reference in these Conditions to any provision of a statute or law shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## 2. SCOPE

The following terms and conditions are valid for all Contracts between the Seller and the Purchaser. These Conditions may not be varied unless so agreed in Writing and signed by the Purchaser and the Seller.

## 3. OFFER OF GOODS

The Seller's offer of Goods is non-binding and subject to confirmation by Seller.

## 4. CONTRACT OF SALE

A Contract is deemed to have been entered into when:

- the Purchaser has approved an offer of Goods in Writing (Order of Goods), and
- the Seller has confirmed in Writing an Order of Goods, or
- the Seller has confirmed an Order of Goods which is different in substance from the terms in the offer of Goods (Order Confirmation).

When the Seller has issued an Order Confirmation, the purchase order is considered binding. Changes may only be made with the written consent of the Seller.

## 5. PRICES

- 5.1. The price of the Goods is exclusive of cost of packing, delivery and Value Added Tax ('VAT'). Packaging and delivery will be charged in accordance with the Seller's standard rates at the date of shipment. The Seller reserves the right to add a handling charge for orders below EUR 100 + VAT.
- 5.2. The prices are based on the stated currency, current exchange rate, and duty. On the date of delivery the Seller has the right to adjust the prices according to changes in exchange rates, purchase prices, duty, freight, and insurance rates or any other change beyond the control of the Seller.
- 5.3. 'Package deal' means that all of the Goods the Seller has offered must be ordered. If one or more Goods are left out of the order by the Purchaser, the price of the Package Deal no longer applies.

## 6. PAYMENT

- 6.1. Seller's standard payment terms are payment in advance. Credit terms can be granted by a separate agreement.
- 6.2. Liability for payment shall arise as soon as a Contract has been entered into by Seller and Purchaser, but no later than the date of shipment of the Goods.
- 6.3. Upon late payment an interest on overdue payment according to the rate 0,5% per day applies. If the Purchaser fails to pay the price on the due date then all outstanding invoices rendered by the Seller to the Purchaser under any contract shall become immediately payable.
- 6.4. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title to the Goods shall not pass to the Purchaser until the Seller has received full payment for the Goods.
- 6.5. If any of the Purchaser's obligations to the Seller are not fulfilled or if the Purchaser's financial condition at any time does not, in the Seller's unfettered judgment, justify continuance of the Contract on the terms of payment specified, the Seller may, without prejudice to any other rights it may have, cancel any outstanding orders or suspend any deliveries of any of the Goods until the Purchaser makes such payment for the Goods ordered as the Seller may require.
- 6.6. In respect of any Order of Goods, the Purchaser may not, unless otherwise agreed in Writing and signed by both parties, set off any amounts owed to it by the Seller against any amounts payable by the Purchaser to the Seller.

## 7. DESCRIPTIONS

- 7.1. All specifications, drawings and particulars of weights, dimensions, capacity or other details provided by the Seller are intended to give a general idea of the Goods but will not form part of the Contract unless otherwise agreed in Writing and signed by both parties. If the Seller's description of the Goods varies from the Manufacturer's description, the Manufacturer's description shall take precedence. The Manufacturer's description is available from the Seller on request in Writing.
- 7.2. Any advice or recommendation given by the Seller to the Purchaser as to the application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Purchaser's own risk. The Seller shall not be liable for any such advice or recommendation which is not so confirmed.

## 8. DELIVERY TERMS

- 8.1. Terms of delivery shall be FCA Warehouse Venlo (Incoterms®2010), The Purchaser shall be responsible for any transport costs and insurance while the Goods are in transit as well as any import duties which might be applicable, unless otherwise agreed upon in Writing.

- 8.2. Selection of the carrier and delivery route shall be made by the Seller unless specified by the Purchaser in Writing.
- 8.3. The Goods will be packed to the Seller's normal specification in non-returnable packaging.
- 8.4. Delivery times given by the Seller are based on the respective Manufacturer's lead times. The Seller shall not be liable for failure to deliver within the time quoted. A late delivery does not on its own give the right to cancellation.
- 8.5. In case of a delay of delivery, the Seller is obligated to inform the Purchaser as soon as possible about the delay, its cause, and an estimated new date of delivery.
- 8.6. Should a delay occur to the shipment or parts thereof, the Seller is not liable to pay damages for whatever cause of the delay, unless it has been proved that the delay is caused by the Seller's fault or negligence and that Purchaser proves a specified loss. No claim for damages shall exceed 5% of the applicable invoice value of the delayed shipment excluding duty and taxes. The Seller shall not be liable for secondary or consequential losses.
- 8.7. The Goods may be delivered in advance of the estimated delivery date and the Seller shall be entitled to make partial deliveries and these Conditions shall apply to each such partial delivery. Each delivery shall constitute a separate Contract and the failure by the Seller to deliver any one or more of the deliveries in accordance with these Conditions or any claim by the Purchaser in respect of any one or more deliveries shall not entitle the Purchaser to treat the Contract as a whole as repudiated.

## 9. COMPLAINTS.

- 9.1. No claim for damage in transit, shortage and errors of delivery or loss of the Goods will be valid unless the Purchaser shall have given to the Seller written notice of such damage, shortage, error or loss with reasonable particulars thereof within seven (7) working days of receipt of the Goods or in the case of a total loss within seven (7) days of receipt of the invoice or other notification of dispatch. The Seller's liability, if any, shall be limited to replacing or repairing such Goods or refunding the price and it shall be a condition precedent to any such liability that the Purchaser shall if so requested have returned the damaged Goods to the Seller within fourteen days of request.
- 9.2. The Seller must be notified in Writing of any errors in the Order Confirmation within five (5) working days.

## 10. CANCELLATION, RETURN, RESCHEDULING

- 10.1. A Contract is binding and non-negotiable and the Seller is not obliged to accept an unsolicited return of Goods. Goods delivered as per the Contract may only be returned under the condition that the Seller has, prior to the returning of the Goods, agreed to it and a Return Material Authorization number (RMA) must be assigned by the Seller before the item can be returned. Returned Goods may be accepted and the value thereof reimbursed only if they are in their original package and in good condition. A 20% return fee is charged upon return of items to stock. Return shipment is at the Purchaser's risk and expense.
- 10.2. The Seller shall be entitled to cancel the Contract without penalty or payment of damages if it is unable to purchase the Goods from the Manufacturer for whatever reason including but not limited to termination of any agency, distribution or franchise agreement made between the Manufacturer and the Seller or the Manufacturer's right to manufacture the Goods being terminated. Prior to terminating the Contract the Seller will use its reasonable endeavors to source the Goods or goods of the same or materially similar specification from a third party.
- 10.3. The Seller may, subject to receiving from the Purchaser 60 days Written notice prior to the Seller's confirmed delivery date, agree to a re-scheduled delivery date of the previously confirmed delivery date for any order or part thereof provided that the Purchaser shall be bound by the terms of the

Seller's written confirmation of the re-scheduled delivery date.

- 10.4. If the Seller agrees to accept a cancellation of an order or part thereof the Seller reserves the right to charge the Purchaser a cancellation fee of 20% of the total order price. In case the Goods were manufactured to Purchaser's specifications, Seller reserves the right to charge the Purchaser a cancellation fee of up to 100% of the total order price.

## 11. FORCE MAJEURE

- 11.1. The Seller shall not be under any liability for failure to perform or delay in performance in whole or in part of its obligations under the Contract due to causes beyond the control of either of the Seller or of the Seller's suppliers, including, but not limited to, natural or artificial disaster, sabotage, acts of terrorism, riot, war, insurrection, strike, acts or omissions of civil or military authority, government regulations, changes in law, embargo's, fire, floods, epidemics, quarantine restrictions, shortage of Goods, material shortages, acts or omissions of other parties, delays in transportation causing delay in delivery to the Seller or the Seller's suppliers. In any such event the Seller may, without liability, cancel or vary the terms of the Contract including, but not limited to, extending the time for performing the Contract for a period of time at least equal to the time lost by reason of such event.
- 11.2. If any of above circumstances the Seller has to inform the Purchaser immediately in Writing.

## 12. WARRANTY

- 12.1. In the ordinary course of its business the Seller is a distributor which purchases the Goods from the Manufacturer and makes no alterations whatsoever thereto before sale to the Purchaser. In so far as it is practicable the Seller maintains the integrity of and sells the Goods in the Manufacturer's original packaging.
- 12.2. The Seller warrants that it will so far as it is able so to do give the Purchaser the benefit of any express guarantee or warranty by the Manufacturer of the Goods (subject always to the terms, conditions and limitations of any such guarantee or warranty) and of any other rights which the Seller has against the Manufacturer. The Purchaser's remedies in respect of any claim that the Goods are defective in accordance with any Contract or any description or representation in respect of any condition or warranty implied by law or any other claim in respect of the Goods or any workmanship in relation thereto (whether or not involving negligence on the part of the Seller) shall in all cases be limited to enforcement of the above mentioned liabilities of the Manufacturer and the Seller shall not in any circumstances be liable for damages, compensation, costs, expenses, losses or other liabilities whether direct, indirect or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law
- 12.3. Where Value Added Goods are found to be defective by reason of faulty materials or poor workmanship on the part of the Seller, the Seller will at its option either replace, repair or issue a credit note to the Purchaser for such Goods or a proportionate part thereof.
- 12.4. The Seller warrants to the Purchaser that all advice given by the Seller to the Purchaser in Writing will be accurate in all material respects. The sole liability of the Seller in respect of any breach of this warranty shall be to replace the Goods or issue a credit note for the price of the Goods in respect of which the advice was given.
- 12.5. Where the Purchaser wishes to rely on any provision contained in this clause it shall be a condition that:
  - 12.5.1. The Seller is notified in Writing within seven (7) days of discovery of any defect by the Purchaser and in any event not later than three (3) months from the delivery date. If the Purchaser does not notify the Seller accordingly the Purchaser shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Purchaser shall be liable to pay the price as if the Goods had been delivered in accordance with the

Contract;

- 12.5.2. the defective Goods are returned to the Seller, subject to prior approval, properly packed and accompanied by a letter giving full details of the Purchaser's original order number, the RMA, the date of purchase and the reason why the Goods are believed to be defective. Return transportation charges shall be paid by the Purchaser and any items incorporated into the Goods by the Purchaser must be removed prior to return;
  - 12.5.3. examination by the Seller of such Goods shall disclose to its satisfaction that such defects exist and have not been caused by fair wear and tear, wilful damage, abnormal working conditions, failure to follow the Seller's instructions, misuse, negligence, improper installation, improper repair, alteration or accident;
  - 12.5.4. the Seller shall be under no liability under the warranties in this clause if the total price for the Goods has not been paid by the due date;
  - 12.5.5. the Seller shall not be held liable for any defect in the Goods arising from any drawing, design or specification supplied by the Purchaser.
- 12.6. The Seller gives no warranty in respect of the future availability of identical goods already sold to the Purchaser.
- 12.7. For Goods that have been repaired or restored within the Warranty period, the Seller grants a continuation of the Warranty, but only up to the date of expiration of the original Warranty.
- 12.8. These warranties are not assignable. The Seller will not accept warranty returns from the Purchaser's own customers or from the users of the Goods.

### 13. LIABILITY

- 13.1. These Conditions expressly set out the Seller's entire liability in respect of the Goods and any representation made in Writing in relation to the Goods. The Seller's liability under these Conditions excludes all other warranties, conditions, terms and liabilities express or implied statutory or otherwise save for death or personal injury caused by the Seller's negligence. Save as expressly provided for in these Conditions the Seller shall not be under any liability whether in contract, tort (including negligence) misrepresentation or otherwise, in respect of defects in the Goods, failure to correspond to specification or sample, advice or for any damage or loss resulting from such defects, failure or advice.
- 13.2. In no event shall any breach of contract on the part of the Seller or misrepresentation or tort (including negligence) or failure of any kind on the part of the Seller or that of its employees, agents or sub-contractors give rise to any liability for loss of revenue or any consequential loss, economic loss or other loss of turnover, profits, business or goodwill.

### 14. PATENT RIGHTS

Any software or other intellectual property included in or relating to products is supplied by its manufacturer or licensor. Seller makes no representation or warranty with respect thereto and will have no liability in connection therewith.

Copyright to any Software whether on its own or in conjunction with other Goods shall remain vested in the copyright owner and the Purchaser shall not reproduce or adapt such Software in whole or in part without the prior agreement of the copyright owner.

### 15. PROHIBITED APPLICATIONS

Unless specifically otherwise agreed in writing by the Seller, the Purchaser acknowledges that Goods sold by the Seller to the Purchaser are not included for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where Goods failure could lead to loss of life or catastrophic property damage. The Purchaser will indemnify and hold the Seller harmless from any loss, cost or damage resulting from the Purchaser's breach of the provisions of this paragraph.

## 16. EXPORT RESTRICTIONS

Products may be subject to export or resale restriction or regulation, and customer acknowledges that it will comply with such restrictions and regulations. Any statement as to product country of origin, Export Control Classification Number, or compliance with applicable law (including, without limitation, that products are lead-free or RoHS compliant) is as provided to Seller by its suppliers, and Seller does not warrant its accuracy and will not be liable for any error with regard to same. Purchaser uses such information at its own risk. Seller and Purchase each certifies that it complies with all applicable laws, including the labor laws and regulations (including fair labor standard laws) and anti-bribery regulations (including the FCPA) in the jurisdictions where it operates.

## 17. NOTICES

Any notice to be given hereunder shall be in Writing and signed by the Party giving it. The sender is responsible for the reception of notice at the receiving party.

## 18. DISPUTES/ Law

Disagreements concerning Contracts and regulations thereof should be settled primarily by the parties to the Contract. In case a settlement cannot be reached, the matters in dispute shall be resolved by the competent court where the Seller is located. This contract shall be governed exclusively by the law of Estonia. The application of the Uniform Law on the International Sales of Goods (ULIS) and the United Nations Convention on Contracts for the International Sales of Goods (CISG) are excluded.

## 19. WAIVER

Failure by the Seller to enforce at any time or for any period any one or more of the Conditions shall not be a waiver of them or of the right at any time subsequently to enforce any or all of the Conditions.

## 20. SEVERANCE AND HEADINGS

Where any Condition is held to be wholly or partially invalid or unenforceable, then such Condition (or the invalid or unenforceable part thereof) shall be treated as severable and the remaining Conditions and the remaining part of that Condition (if any) shall be unaffected by such invalidity or un-enforceability. Headings are for convenience only and shall not affect the interpretation of the Conditions.