

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these conditions:-
"Company" means MESL Microwave Limited;
"Customer" means the other contracting party;
"Products" means all the goods supplied by the Company under the Contract;
"Services" means all the services supplied by the Company in relation to the Products;
"Order" means the order placed by the Customer with the Company for the Products and/or Services;
"Contract" means an Order accepted by the Company in writing;
"Total Contract Price" means the aggregate price of all the Products and/or Services (excluding VAT) supplied by the Company under the Contract;
"Notice" means a notice given in accordance with Clause 10 below;
"Specification" means the Company's specification for the Products;
"deals as consumer" has the same meaning as in Section 12 of the Unfair Contract Terms Act 1977;
"Group company" means MESL Holdings Limited and any subsidiary thereof.

2. QUOTATION

All quotations shall be subject to these conditions and unless otherwise stated or unless withdrawn by the Company shall be valid for a period of thirty (30) days from the date of the quotation. The quotation is not an offer to proceed and the Customer is required to place a written Order with the Company using the same reference as on the quotation.

3. PRECEDENCE OF THESE CONDITIONS

The Customer agrees that the Order fully specifies its requirements for Products and/or Services and unless agreed to by the Company in writing shall be deemed to be placed subject to these conditions notwithstanding anything to the contrary contained in or referred to in the order. The Order shall not be binding on the Company until specifically accepted in writing.

4. PRICES

Unless otherwise stated all prices are strictly net, and are for delivery to site in the mainland of the U.K. or F.O.B. U.K. port for any other destination.

5. PRICE ADJUSTMENT

Unless otherwise agreed, the Company reserves the right at any time prior to delivery to vary the price quoted for the Products and/or Services if following the date of the Order there is any change in rates of exchange, any imposition or alteration of Government tax, any increase in the cost of materials, labour or transport or if the cost of supplying the Products and/or Services is increased by any other factor beyond the control of the Company.

6. PAYMENT

- a) U.K. Customers
- i. Unless otherwise agreed payment is to be made against the Company's invoice and payment shall be net cash within 30 days of the date of invoice.
- ii. Any sums not paid on the due date shall be subject to an interest charge at the rate of 4% per annum above the Base Rate of Barclays Bank PLC from time to time compounded monthly on all amounts overdue until payment thereof such to run from day to day and to accrue after as well as before any judgement.
- b) Overseas Customers
- Unless otherwise agreed the Order must be accompanied by a remittance or advice that an irrevocable Sterling Pounds Letter of Credit has been established with and confirmed by a major U.K. Clearing Bank in favour of the Company. This Letter of Credit shall have a validity equal to the full delivery period of the Products plus two months and shall provide for part shipment and trans-shipment with the release of one hundred per cent of the value for each shipment against presentation of commercial invoices, packing list and bill of lading or forwarding agents receipt or airwaybill in evidence of despatch of the Products. All bank charges, shall be borne by the Customer unless specifically agreed otherwise.

7. SET-OFF

- In the event that either:-
- a) the Customer has not paid any sum or sums which are due and payable to the Company; or
- b) the Company has not paid any sum or sums which are due or about to be due and payable to the Customer for any reason;
- the Company shall have the right at its sole discretion to reduce the Customer's indebtedness referred to in sub-clause (a) above by setting off against such indebtedness any sums due and payable to the Customer by any Group company or reduce the Company's indebtedness referred to in sub-clause (b) above by setting off against such indebtedness any sums due and payable by the Customer to any Group company.

8. DELIVERY AND RISK

- a) Subject to the following sub-clauses of this clause 8 all risks shall pass to the customer upon delivery.
- b) Unless otherwise specified delivery shall be deemed to take place when the Products have been delivered to the Customer's premises or other specified delivery point in the U.K., to the Customer's carrier if to be collected or F.O.B. U.K. port if for despatch overseas.
- c) All dates and times specified to the Customer for delivery and installation of the Products or the provision of Services are estimates only and the Company shall not have any liability for delay or for any damages or losses sustained by the Customer as a result of such dates or times not being met. The Customer shall not be entitled to refuse acceptance of the Products or Services as a consequence of such delay. The Company may in its absolute discretion withhold delivery of the

Products and/or supply of the Services pending payment of any sum due from the Customer either to the Company or to any Group company.

- d) If the Customer does not accept delivery of a consignment of Products in accordance with the Contract then:
- the Company shall be entitled to claim payment in accordance with clause 6 above for the Products refused, and
 - the Products refused shall be in all respects at the Customer's risk; and
 - the cost of storing the Products shall be borne by the Customer; and
 - if such failure to accept delivery continues for more than ten days the Company shall have the right to terminate the Contract pursuant to clause 18 below.

9. DAMAGE OR LOSS IN TRANSIT

The Company will at its discretion either refund the cost or replace or repair free of charge any Products proved to the Customer's satisfaction to have been lost or damaged in transit up to the moment of delivery provided that within three days of receipt of the Products in the case of damage or within ten days of the date of the invoice or advice note or equivalent notice whether oral or written in the case of loss the Customer notifies both the carrier and the Company in writing of the nature and extent of the damage or loss. The Company accepts no liability for delay in transit. Unless the Products are checked on receipt the carriers documentation should be endorsed "unexamined".

10. NOTICES

Any notice required to be given hereunder shall be sufficiently given if properly addressed and sent by registered post, facsimile transmission or telex in the case of the Company its registered office and in the case of the Customer its last known address and shall be deemed to have been properly served at the time when in the ordinary course of transmission it would reach its destination. Such notice shall specify that it is a notice given pursuant to this Clause 10.

11. TITLE

- a) The Customer shall retain title to the Products as legal and equitable owner until it shall have received all sums due to it from the Customer whether under the Contract or any other contract between the parties.
- b) Subject to sub-clauses (d) and (e) below until the Customer has paid the Total Contract Price together with all VAT payable thereon:-
- the Customer shall store the Products in a manner which makes them readily identifiable as the property of the Company; and
 - the relationship of the Customer to the Products shall be fiduciary in respect of the Products and accordingly the Company shall have the right to trace any proceeds of sale.
- c) If any event occurs under Clause 18 below which would entitle the Company to terminate any Contract:
- the Customer shall immediately advise the Company by Notice of such event; and
 - notwithstanding any failure to give such Notice, all sums due to the Company shall become immediately payable; and
 - the Company by its servants or agents may for the purposes of recovery of all or any of the Products enter upon any premises where they are reasonably thought to be stored and may repossess the same.
- d) The Customer is licensed by the Company to agree to sell the Products, subject to the express condition that the entire proceeds thereof are held in trust for the Company.
- e) The Customer is licensed by the Company to mix the Products with goods not supplied by the Company subject to the following express conditions, which shall apply unless and until all sums due to the Company have been paid:
- if the Products are incorporated in or fixed or attached to or used as material for goods owned by the Customer to form new goods such goods shall be deemed to be the sole and exclusive property of the Company; or
 - if the Products are incorporated in or used as material for goods owned by a third party to form new goods such goods shall become or shall be deemed to be owned in common with that third party in proportion to the value of the Products to the other goods at the date of such incorporation or use.

The Company's rights hereunder shall extend to those new goods whether under sub-clauses (e), (i) or (e), (ii) above and in particular the Customer shall hold any proceeds of sale of such new goods on trust for the Company.

12. SPECIFICATION

- a) The Products will be supplied generally in accordance with the Specification. The Company's policy is one of continuous development and consequently the Specification may vary from time to time. The Company will not accept liability for the Products in respect of variations from the Specification except where any variation from the Specification is material.
- b) Descriptions and illustrations contained in Company catalogues shall not form part of the Contract.
- c) All specifications, drawings and technical descriptions submitted with or in connection with any quotation or acknowledgement of the Company are the Company's copyright.

13. WARRANTY

THIS CLAUSE 13 DOES NOT AFFECT THE CUSTOMER'S STATUTORY RIGHTS WHERE THE CUSTOMER DEALS AS CONSUMER.

a) Any Products which are found to be the Company's satisfaction to be defective as a result of faulty

manufacture or workmanship will at the sole discretion of the Company either be replaced free of charge or repaired free of charge provided that:-

- the Products (or samples thereof showing the alleged defects) are returned properly packed carriage paid to the Company's works in the U.K. at the Customer's risk within 12 months from the date of delivery as defined in clause 8 above, and
 - the Products have not been misused, mishandled, overloaded, amended, modified or repaired in any way by the Customer, its servants or agents, or used for any purpose other than that for which they were designed, and
 - if the Products have been manufactured to the Customer's design the defects are not as a result of faulty design of the Customer.
- b) Repaired or replaced Products will be returned free of charge to destinations on the mainland of the U.K. or delivered F.O.B. U.K. Port for other destinations.

14. CUSTOMER ACKNOWLEDGEMENT

- The Customer acknowledges and agrees that:
- a) it is responsible for the operation of the Products and should ensure that they are used safely and that it should use, maintain, store and keep the Products in accordance with any instructions, user handbook or other form of guidance relating to them; and
- b) notwithstanding the Company's acceptance of liability as set out in clause 15 below, it would be prudent for the Customer to insure against all loss or damage the Customer may suffer as a result of the Company's acts or omissions whether negligent or not on the basis that the Company's potential liability hereunder might otherwise be disproportionate to the Total Contract Price.

15. LIABILITY

- a) The warranty given in clause 13 above is the only warranty given by the Company and otherwise this clause 15 specifies the entire liability of the Company including liability for negligence and in particular but without limitation all statutory or other express implied or collateral terms, conditions or warranties are excluded.
- b) The Company accepts liability except in the case of international supply contracts as described in the Unfair Contract Terms Act 1977:-
- for death or personal injury resulting from its negligence
 - arising out of any breach of the obligations as to title implied by statute
 - where the Customer deals as consumer for any breach of any condition or warranty implied by statute as to the correspondence of the Products with description or sample or as to their quality or fitness for purpose or particular purpose
 - up to the amount calculated pursuant to clause 15(f) below for direct physical damage to or loss of property resulting from the negligence of the Company.
- c) The Customer is required to advise the Company by Notice of any claim under clause 15(b) above as soon as reasonably possible except that any claim under clause 15(b)(iv) above shall be notified to the Company within ten (10) days of the Customer suffering any alleged loss or damage.
- d) Except as provided in clauses 15(a) and (b) above the Company shall not be under any liability (including liability for negligence) for any loss or damage or injury to the Customer whatsoever no matter when or how arising out of the Products or Services or otherwise whether direct or indirect consequential or contingent and whether foreseeable or not and in particular shall not be liable for financial loss or loss of profits, contracts, business, anticipated savings use or goodwill.
- e) The Customer will indemnify the Company against any liability (including liability for negligence) no matter when or how arising out of any claim by any third party against the Company together with all legal costs relating thereto except that insofar as the claim relates to direct physical damage to or loss of property resulting from the negligence of the Company, this indemnity shall only apply if and to the extent that the claim and/or legal costs exceed the sum calculated pursuant to clause 15(f) (i) and (ii) below.
- f) Under no circumstances except as provided in clauses 15(b) (i) (ii) and (iii) above will the Company's liability whether in contract tort or otherwise exceed in the aggregate:
- where the Total Contract Price is £200,000 or less, the sum of £100,000; or
 - where the Total Contract Price exceeds £200,000, fifty percent of the Total Contract Price.

N.B. THIS CLAUSE 15 DOES NOT AFFECT THE CUSTOMER'S STATUTORY RIGHTS WHERE THE CUSTOMER DEALS AS CONSUMER.

16. PATENT INDEMNITY

If the Customer is threatened with any action alleging that the Products in the form sold infringe any Patent, Copyright Registered Design or other intellectual property rights then provided that the Customer promptly gives Notice to and fully co-operates with the Company and in cases where the Company so requests allows the Company to defend any action on the Customer's behalf and have the sole control of any and all negotiations for settlement, then the Company will indemnify the Customer against any award of damages and costs against the Customer arising from such action. Further, if such event occurs the Customer agrees that the Company shall have the option at its own expense either:

- to modify the Products so that they do not infringe or
- to replace the Products with non-infringing goods or

- to procure for the Customer the right for the Customer to continue its use of the Products or
 - to reimburse the Products from the Customer at the price paid by the Customer less depreciation.
- The Company shall have no liability in respect of claims for infringement or alleged infringement of third parties patent or other proprietary rights arising from the execution of the Order in accordance with the Customer's designs, plans or specifications and the Customer shall indemnify the Company against all losses, damages, expenses, costs or other liability arising from such claims.

17. EXCUSABLE EVENTS

The Company shall be under no liability to the Customer for any breach of any provision hereof or failure on its part to perform any obligation as a result of acts of God, war (whether declared or not), sabotage, riot, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, fire, accident, earthquake, storm, flood, epidemic, drought, or other natural catastrophes, inability to obtain equipment, suitable raw materials, components, fuel, power or transportation, disputes with workmen, strikes or lockouts, shortage of labour or any other cause beyond the control of the Company and the Company will give Notice to the Customer if affected by any of the causes referred to in this sub-clause. In the event that the Company is unable to perform its obligations under the Contract by reason of any of the causes referred to above for a period of six months or more then either party may at any time after the expiration of such six month period terminate the Contract by Notice.

18. TERMINATION

Without prejudice to any claim or right it might otherwise make or exercise the Company shall have the right forthwith to determine the Contract by Notice and to claim for any losses, costs or expenses thereby incurred if the Customer commits any serious breach of any of the terms of these conditions or if the Customer makes or offers to make any arrangement or composition with creditors or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is presented or made against the Customer, or if any resolution or petition to wind up the Customer is passed or presented otherwise than for reconstruction or amalgamation or if a receiver of the Customer's undertaking property or assets or any part thereof is appointed or if a third party seizes or threatens to seize the Products before legal ownership has passed to the Customer in accordance with clause 11 above.

19. CONSENTS

Where applicable the Company shall endeavour to obtain an export licence and all other necessary consents to enable the Products to be exported from the U.K. In the event that the Company is unable to obtain an export licence or visas or consents for personnel required to provide Services outside the U.K. the Company shall not be held liable for its failure to perform the Contract. The Customer shall be responsible for obtaining all consents necessary for the import of the Products to the country of its destination.

20. FORWARDING INSTRUCTIONS

Forwarding instructions where required shall be provided by the Customer not later than seven days after being advised that the Products are ready for despatch. If no forwarding instructions are received within this period the Company shall have the right thereafter to deliver the Products and to charge the Customer in accordance with clause 6 above.

21. INSTALLATION AND COMMISSIONING

If the Services required by the Customer are special services such as installation, commissioning, training development or management services, any additional terms of the Company applicable to such Services will apply except that in the event of any conflict these conditions shall prevail.

22. AMENDMENTS OR CANCELLATIONS

Once accepted by the Company no Order can be amended or cancelled except with the Company's written approval and upon terms which indemnify the Company against any losses including loss of profit or additional costs resulting therefrom.

23. ENTIRE AGREEMENT

These conditions supersede all previous conditions, understandings, commitments, agreements or representations whatsoever whether oral or written relating to the subject matter hereof and shall not be varied except with the Company's written consent.

24. TAXES

- a) Orders for supply within the U.K.
All prices are exclusive of Value Added Tax which will be charged at the rate current at the date of invoice.
- b) Orders for supply outside the U.K.
All prices are exclusive of all taxes, charges or levies of any kind whether payable on the supply of the Products and/or Services to destinations outside the U.K. or otherwise, and these are payable by the Customer.

25. GOVERNING LAW

These conditions and the Contract shall be governed, construed and shall take effect in accordance with the laws of England, and shall be subject to the jurisdiction of the English Courts.

26. HEADINGS

The heading in these conditions shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction hereof or of the Contract.

27. CONSTRUCTION

If any of the words or provisions of these conditions shall be deemed to be invalid for any reason then the conditions shall be read as if the invalid provisions had to that extent been deleted therefrom and the validity of the remaining provisions of the conditions shall not be affected thereby.