

- 1 Interpretation
- 1.1 In these Conditions:
  - 'BUYER' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.
  - 'GOODS' means the Goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions.
  - 'SELLER' means TRAK Microwave Company Limited (registered in Scotland under number 944479)
  - 'CONDITIONS' means the standard terms and Conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and Conditions agreed in Writing between the Buyer and the Seller.
  - 'CONTRACT' means the contract for the purchase and sale of the Goods.
  - 'WRITING' includes telex, cable, facsimile transmission and comparable means of communication.
- 1.1.1 Reference. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.1.2 Headings. The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 2 Basis of Sale
  - 2.1 Seller & Buyer. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and other conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer.
- 2.2 Variation. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3 Advice and Recommendations. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and, accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.3.1 Typographical Errors. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 3 Orders and Specifications
  - 3.1 Acceptance of Orders. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
  - 3.2 Accuracy of Terms. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
  - 3.3 Description of Goods. The quantity, quality and description of any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if acceptable by the Seller).
  - 3.4 Changes to Specification. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
  - 3.5 Cancellation. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 4 Price of the Goods
  - 4.1 Prices. The price of the Goods shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's published price list current at the date of acceptance of the order.
  - 4.2 Basis of Price. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.3 Value Added Tax. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 5 Terms of Payment
  - 5.1 Invoicing. Subject to any special terms agreed in Writing between the Buyer and Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
  - 5.2 Payment. The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
  - 5.3 Failure to Pay. If the Buyer fails to make payment on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
    - 5.3.1 Cancellation / Suspension of Deliveries. Cancel the contract or suspend any further deliveries to the Buyer.
    - 5.3.2 Appropriation. Appropriate any payment made to the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer).
- 6 Delivery
  - 6.1 Basis of Delivery. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, to that place.
  - 6.2 Delivery Dates. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
  - 6.3 Partial Deliveries. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claims by the Buyer in respect of anyone or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
  - 6.4 Failure to Deliver. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.
  - 6.5 Failure to Accept Delivery. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:
    - 6.5.1 Storage. Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or
    - 6.5.2 Resale. Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 7 Risk and Property
  - 7.1 Risk. Risk of damage to or loss of the Goods shall pass to the Buyer.
  - 7.1.1 Delivery at the Seller's Premises. In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection or
  - 7.1.2 Delivery to Other Premises. In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
  - 7.2 Passage of Property. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.
  - 7.3 Responsibility. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and property stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys of the property of the Buyer and the third parties and, in the case of tangible proceeds, property stored, protected and insured.
  - 7.3.1 Repossession. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where Goods are stored and repossess the Goods.
- 7.4 Title. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 8 Warranties and Liability
  - 8.1 Warranty. Subject to the Conditions set out below the Seller warrants that unless mutual written agreement states otherwise the Goods will correspond with their specifications at the time of delivery and will be free from defects in material and workmanship for a period of thirteen months from the date of receipt dispatch.
  - 8.1.1 Liability. The Seller shall be under no liability in respect of any defects in the Goods arising from any drawing, design or specification supplied by the Buyer.
  - 8.1.2 Misuse. The Seller shall be under no liability in respect of any defect arising from fair wear and tear, misuse, wilful damage, negligence, abnormal working Conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval.
  - 8.1.3 Passage of Warranty. The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
  - 8.2 Limitation of Warranty. The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
  - 8.3 Exclusion. Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, Conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
  - 8.4 Statutory Rights. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions Restrictions on Statements Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
  - 8.5 Rejection. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
  - 8.6 Replacement. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the
- 8.7 Consequential Loss. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms or the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), cost, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.8 Force Majeure. The Seller shall not be liable to the Buyer to be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
  - 8.8.1 Act of God: Act of God, explosion, flood, tempest, fire or accident
  - 8.8.2 War: War or threat of war, sabotage, insurrection, civil disturbance or requisition
  - 8.8.3 Legal: Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.
  - 8.8.4 Import / Export: Import or export regulations or embargoes
  - 8.8.5 Industrial Action: Strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party).
  - 8.8.6 Material: Difficulties in obtaining raw materials, labour, fuel, parts or machinery.
  - 8.8.7 Power: Power failure or breakdown in machinery.
- 9 Indemnity
  - 9.1 Patent, Copyright/ If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim provided that:
    - 9.1.1 Control. The Seller is given full control of any proceedings or negotiations in connection with any such claim.
    - 9.1.2 Assistance. The Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations.
    - 9.1.3 Claim and Compromise. Except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not unreasonably be withheld).
    - 9.1.4 Vitiolation. The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such claim and the indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do).
    - 9.1.5 Benefit. The Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim and,
    - 9.1.6 Mitigation of Claim. Without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, cost or expenses for which the Seller is liable to indemnify the Buyer under this clause.
- 10 Insolvency of Buyer
  - 10.1 Definition. This claim applies if:
    - 10.1.1 Liquidation. The Buyer makes any voluntary arrangements with its creditors or becomes subjects to an administration or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or
    - 10.1.2 Encumbrance. An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer or:
    - 10.1.3 Cessation of Trading. The Buyer ceases or threatens to cease to carry on business
    - 10.1.4 Suspicion. The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly
  - 10.2 Cancellation. If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 11 Trade compliance obligations
  - 11.1 Buyer hereby acknowledges and agrees that the Products and/or Confidential Information, may be subject to applicable export control and trade control laws, regulations, rules and licences, including without limit Council Regulation (EC) No. 1334/2000, the U.K. Export Control Act 2002, the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, any legislation replacing the foregoing and any orders issued under the foregoing ("Export Control and Trade Sanctions Rules").
  - 11.2 Buyer shall comply with the Export Control and Trade Sanctions Rules and agrees that it alone is responsible for ensuring its compliance with Export Control and Trade Sanctions Rules. In particular, but without limit, Buyer will not, and will procure that none of its Affiliates will, use, sell, resell, export, transfer, divert, distribute, dispose of, disclose or otherwise deal with the Products and/or Confidential Information, directly or indirectly, to any country, destination or person without first obtaining any required export licence or other governmental approval and completing such formalities as may be required by Export Control and Trade Sanctions Rules. Where, under the Export Control and Trade Sanctions Rules, Supplier is required by any governmental authority to impose obligations on Buyer, Buyer shall comply with such obligations.
  - 11.3 Notwithstanding the generality of Clause [11.2] immediately above, unless agreed expressly in writing in advance by the Supplier, it is a condition of supply of Product and/or Confidential Information by the Supplier that the Product and/or Confidential Information is not:
    - 11.3.1 Directly or indirectly used in production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production maintenance or storage of missiles capable of delivering such weapons; and
    - 11.3.2 Supplied to any person who intends to use them for a military purpose, including but not limited to development, production or use of any materials for the conduct of war, military or paramilitary operations.
  - 11.4 Supplier shall use reasonable efforts to obtain all necessary authorisations and licences as may be required by it under Export Control and Trade Sanctions Rules for the export of the Products and/or Confidential Information to Buyer. Notwithstanding the foregoing, Buyer expressly acknowledges that Supplier's obligation to furnish Products and/or Confidential Information hereunder is subject to the ability of Supplier to supply such items consistent with Export Control and Trade Sanctions Rules. Supplier reserves the right to refuse to enter into or to perform any order, and to cancel any order placed under this Agreement if Supplier in its sole discretion determines that the entry into such order or the performance of the transaction to which such order relates would violate any Export Control and Trade Sanctions Rules to which it is subject. Supplier shall be excused from performance, and not be liable for damages or costs of any kind, including but not limited to penalties, for late delivery, for failure to deliver or delay in delivering the Products and/or Confidential Information resulting from an authority's denial, withdrawal or delay in granting such authorisations or licences.
  - 11.5 Buyer shall use reasonable efforts to obtain and provide to Supplier in a timely manner end-user, end-use and other documentation, certifications and information as may be requested by Supplier in support of Supplier's applications to the appropriate authorities in connection with the export and/or sale of the Products and/or Confidential Information to Buyer. If Supplier has reason to believe that Buyer has misrepresented or failed properly to disclose any material fact, including without limitation the intended end-user/end-user or destination of the Products, Supplier may terminate this Agreement immediately in writing and discontinue all performance hereunder with no further obligation to the Buyer.
  - 11.6 If requested by Buyer, Supplier will provide reasonable assistance to Buyer in relation to applications for any relevant export approval, but Supplier assumes no responsibility or liability for Buyer's failure or inability to obtain any required relevant export approval.
  - 11.7 Buyer shall not do anything which would cause Supplier to be in breach of the Export Control and Trade Sanctions Rules and shall protect, indemnify and hold harmless Supplier from any fines, damages, costs, losses, liabilities, fees and penalties incurred by Supplier as a result of the errors, mistakes, failures or omissions of Buyer to comply with this Clause [11.1].
  - 11.8 In its contracts with any third party pertaining to the Products, Confidential Information and/or any products derived therefrom, Buyer agrees to impose on such third party the same obligations and requirements imposed on it by Supplier in this Clause [11.1].
  - 11.9 Failure by Buyer to comply with any part of this Clause [11.1] shall constitute a material breach of this Agreement. Buyer's obligations under this Clause [11.1] shall survive termination of this Agreement for any reason whatsoever.
- 12 Export Terms
  - 12.1 Incoterms. In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at that date when the Contract is made. Unless the contract otherwise requires any term or expression which is defined in or given a particular meaning to the provisions of Incoterm shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterm and these Conditions the latter shall prevail.
  - 12.2 Other Provisions. Where the Goods are supplied for export from the United Kingdom, the provision of this Clause 11 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
  - 12.3 Legislation & Duties. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for payment of any duties thereon.
  - 12.4 Basis of Sale. Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under Section 32 (3) of the Sale of Goods Act 1979.
  - 12.5 Test & Inspection. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller has no responsibility for any claim in respect of any defect in the Goods, which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
  - 12.6 Letters of Credit. Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank acceptable to the Seller; if the Seller has agreed in Writing on or before acceptance of the buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such Bank as may be specified in the bill of exchange.
- 13 General
  - 13.1 Smiths Group PLC. The Seller is a member of a group of Companies whose holding company is Smiths Group PLC and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
  - 13.2 Effective Notice. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or 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 the notice.
  - 13.3 Waiver. No waiver by the Seller of any breach of Contract by the Buyer shall be considered as a waiver of the subsequent breach of the same or any other provision.
  - 13.4 Validity. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
  - 13.5 Applicable Law. The Contract shall be in accordance with the Law of Scotland.