



**The Terms and Conditions listed below cover the supply of goods and services by M4EMS Ltd to its customers. Please bring them to the attention of all persons within your organisation who order our goods / services and handle the related paperwork.**

**In these Terms and Conditions the following words have the following meanings:**

**“Affiliates”** Means in relation to a company, its subsidiaries and holding companies and the subsidiaries of its holding companies

**“Conditions”** Means the terms and conditions set out or referred to in this document, as the same may be varied as expressly provided in Clause 1 of these conditions

**“Company”** M4EMS Limited whose registered office is at Unit 16 Willow Road Pen-y-Fan Industrial Estate Croespenmaen Crumlin Newport NP11 4EG (Registered Number: 0385 6250)

**“Contract”** Means the Contract for the provision of services and/or sale of goods between the supplier and the customer

**“Customer”** Means the person, business or company who contracts with the Company

**“Goods”** All and any goods offered for sale by the Company

**“Price”** The price for the Goods excluding carriage, packing, insurance and VAT as set out in the Company’s quotation or as set out in the Company’s price lists currently in force.

**“Order”** Any order whether verbal or written placed with the Company for the supply of Goods or Services

**“Services”** Means any services which are the subject matter of the Contract

**“Delivery Date”** The date on which the Goods are delivered to the Customer

## **1. General**

**1.1** These Terms and Conditions (which may be amended from time to time by the Company giving at least 7 days notice in writing to the Customer) apply to Goods and specifically exclude any other terms or conditions the Customer might seek to impose.

**1.2** Acceptance in full of these Terms and Conditions is deemed to have taken place by the Customer’s application for credit and/or by the placing of an Order with the Company.

**1.3** No alteration, waiver or modification of these Terms and Conditions shall be valid unless countersigned by a duly authorised Director of the Company.

## **2. Orders**

**2.1** All Orders shall be deemed to be an offer by the Customer to purchase Goods pursuant to these Terms and Conditions.

**2.2** As soon as a written or oral order is taken from the Customer by the Company the Customer is bound to accept the Goods.

**2.3** Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Customer's acceptance of these Terms and Conditions.

**2.4** The Company may from time to time make changes in the specification of the Goods in compliance with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.

**2.5** All orders are subject to credit approval before acceptance, and periodical review of credit limits.

### **3. Price and Payment**

**3.1** All Goods and or Services are accepted and quotations made on the basis that the Goods and or Services will be charged at the Price ruling at the date of the Order. That or otherwise as agreed in writing between the Company and the Customer.

**3.2** Unless otherwise specified, Prices quoted are exclusive of VAT and all other taxes and duties payable, except import tariff, which is included in the Price.

**3.3** Unless otherwise specified in writing by the Company invoices in respect of the Goods and or Services are raised on delivery of the Goods and are due for payment 30 days from the end of the month following the invoice date, time of payment to be of the essence

**3.4** Bills of exchange, banker's drafts and letters of credit will be accepted only by prior agreement in writing and the Customer will be liable for any discounting or bank charges incurred.

**3.5** A clerical mistake or a mistake arising from any accidental slip or omission in a letter of credit will not discharge the Customer from his obligation to pay for the Goods and the Customer will ensure that payment to the Company is made. The Company reserves the right to charge any travelling carriage cost it incurs which shall be an additional cost to the Customer. The Customer shall make all payments without any withholding, deduction, set off or counterclaim in the United Kingdom pounds sterling in immediately available funds unless otherwise agreed in writing between the Customer and the Supplier

**3.6** The Customer shall purchase at the Contract Price all stocks, finished and unfinished, which the Company hold for the purpose of meeting the Customer's requirements under the Contract, even if the Contract is terminated for whatever reason.

**3.7** Whether the Contract is fulfilled or terminated for whatever reason, the Customer shall purchase at cost any components which are surplus to the requirements of the Contract as a result of minimum order quantities imposed by the Company's source of components or by virtue of the (pack size demanded by the manufacturing process)

**3.8** Time of payment by the Customer is of the essence of each for each Contract.

**3.9** The Company reserves the right to charge compound interest at 8% per annum over Nat West Bank Plc's base rate on all amounts overdue before and after judgment accruing on a daily basis. The Customer will be liable for all costs incurred in the collection of the amounts overdue (including without limitation all legal and administrative costs) after the due date of payment on a full indemnity basis.

**4.0** If the Customer is in default in making payment, the Company may decline to make further deliveries without affecting its rights under, or repudiating these Terms and Conditions and the Customer shall be entitled to bring no action or claim in respect of the exercise of this right. If despite default by the Customer the Company continues to supply Goods, this will not constitute a waiver or in any way prejudice the Company's legal position. Until payment of all amounts due from the Customer under the Contract, the Company shall have a lien on all goods and documents, which belong to the Customer and are in the possession of the Company in connection with the Contract.

**4.1** If the Company shall extend credit in respect of any part of the Goods or services it shall be without prejudice to its right to refuse to give up possession of any part of the Goods except against payment.

**4.2** Where the Goods and Services are to be supplied by instalments or where payment has been made by instalments, the failure of the Customer to pay any instalment in due time shall entitle the Company to treat such failure as a repudiation of the whole of the Contract by the estimate and to recover damages for any breach of the Contract.

**4.3** If payment is overdue in whole or in part, then the whole of any amounts invoiced by the Company shall immediately become due and payable whether or not such monies would have been due and payable but the provisions of this sub clause.

**4.4** The cost of pallets and packaging of the Goods will be due from the Customer and invoiced in addition to the Price.

## **5.0 Set Off**

**5.1** The Company will in respect of all unpaid debts due from the Customer for the sale of Goods or any other contract have a general lien over Goods of the Customer in its possession although such Goods or some of them may have been paid for and will after the expiration of 14 days notice to the Customer be entitled to dispose of such Goods as it deems fit and apply the proceeds towards such debts

## **6 Samples**

**6.1** Samples are provided to the Customer solely to enable the Customer to judge for himself the specification and quality of the Goods and not as to constitute a sale by sample. The Customer will take the Goods at his own risk as to their corresponding with the said sample and subject to the normal variation between bulk and sample.

## **7 Data Regarding Goods**

**7.1** Where Goods are supplied by the Company to the Customer with a data sheet specification the Customer must use the Goods according to their specification. The Company will not accept any responsibility for any defects caused by the Customer's use of the Goods outside their specification.

**7.2** The Company will accept the return of time sensitive Goods where such Goods are out of date on the Delivery Date.

**7.3** The Company does not warrant the accuracy of any data supplied to the Customer by its agents or suppliers.

## **8 Modification**

**8.1** If between the date of acceptance of the Order and the Delivery Date the Company or its suppliers adopt any changes in construction or design of any Goods, the Customer will accept the Goods as modified.

## **9 Materials Supplied**

**9.1** The Company may reject any and other materials supplied or specified by the Customer including written or graphic material if in the Company's opinion it is unsuitable, of defective quality or likely to result in civil or criminal proceedings. Any additional cost incurred by the Company as a result of or in connection with such material shall be charged to the Customer by the Company and shall be paid by the Customer at the same time as and shall be treated as an addition to, the price for the Goods and/or Services. Such supply or specification by the Customer to the Company must be made within a reasonable time prior to production and the case of the Company, must be of an adequate quantity to allow for normal spoilage. The risk in any material or property supplied to the Company by or on behalf of the Customer shall not pass to the Company, but shall be that of the Customer.

## **10 Specification**

**10.1** Where Goods and/or Services are supplied pursuant to or in connection with specifications, information, data or materials supplied or approved by the Customer, it is the responsibility of the Customer to ensure that all such specifications, information, data and material are accurate. The Company accepts no responsibility for the accuracy of such specifications, information, data or material or for any defects in goods and/or services consequent upon any inaccuracies in such specifications, information, data or material, or for any consequences of such defects.

**10.2** It is the responsibility of the Customer to satisfy itself as to the suitability of the Goods and/or services for its needs and the environment in which Goods are to be used and that the Goods and/or goods that are the subject matter of the services comply with all statutes, laws or regulations relating to Goods of that type in any state or country in which they are to be used or sold unless the Company accepts no responsibility for the relevant goods or any part thereof which are not so suitable or compliant.

**10.3** It is the responsibility of the Customer to obtain all necessary type approvals and/or other approvals, licences or authorizations which may be required to allow goods to be exported from the United Kingdom or imported into or used in any state or country including the United Kingdom. The Company makes no warranty that the Goods and/or goods that are the subject matter of Services comply with any legal or other requirements of any state of country or that all or any such type approvals or licences or authorities can be obtained for such Goods with or without modification.

**10.4** It is the responsibility of the Customer to ensure that Goods and/or goods that are the subject matter of the Services are used by it in accordance with any directions, instructions or recommendations made by the Company and that all such directions, instructions or recommendations are passed on to all users of all relevant goods at the time of their delivery to such users.

## **11 Liability for Defective Goods**

**11.1** Save as provided by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or any other superseding statutory provision, the Company will not accept liability for any defects in the Goods.

**11.2** If the Customer intends to send the Goods on, the Customer will inspect the Goods prior to releasing them

**11.2** Notwithstanding clause 11.1 above the Company will only accept liability for any defect provided that:

**11.2.1** the Customer inspects the Goods immediately upon delivery and gives written notice to the Company of the alleged defect, such notice to be received by the Company within seven days of the Delivery Date, and

**11.2.2** the Customer affords the Company a reasonable opportunity to inspect the Goods and if so requested by the Company returns a sample of the allegedly defective Goods to the Company, carriage pre-paid, for inspection to take place there, or to the original supplier for testing, and

**11.2.3** the Customer makes no further use of the Goods that are alleged to be defective after the time at which the Customer discovers or ought to have discovered that they are defective.

**11.3** Notwithstanding clauses 11.2.1, 11.2.2 and 11.2.3 above the Company will not be responsible for:

**11.3.1** defects caused due to compliance by the Company with the Customer's own instructions, or

**11.3.2** defects caused by the incorrect operation or handling by the Customer of the Goods, or

**11.3.3** defects caused by the Customer using the Goods outside their specification or normal purpose or outside published performance data.

**11.4** If the Company is of the opinion that any Goods are defective the Company may at its discretion: -

**11.4.1** replace the Goods; or

**11.4.2** take such steps as the Company deems necessary to bring the Goods into a state where they are free from such defects; or

**11.4.3** issue either a partial or full refund or credit note for the appropriate part of the Price, PROVIDED THAT the liability of the Company will not exceed the Price of the defective Goods.

**11.4.4** Performance of any of the options in clause 11.4 will constitute an entire discharge of the Company's liability for defective Goods.

**11.5** The Company will not accept the return of Goods without written authorisation signed by a duly authorised employee of the Company.

**11.6** Any Goods returned by a Customer to the Company must be returned in their original packing. And damage to the Goods in transit thought to be caused by inadequate packaging will be borne solely by the Customer.

## **12 Performance in Instalments**

**12.1** In the event of an Order for a large quantity of Goods being placed the Company may perform the delivery of such Goods in instalments and each instalment will be deemed to be a separate contract and no failure of or delay in any instalments nor any defect in the content thereof will entitle the Customer to treat the contract with regard to any remaining instalments as repudiated. The Company will raise a separate invoice and require payment for each such instalment

## **13 Delivery**

**13.1** Unless acceptable specific instructions are received from the Customer, the Company will select a suitable carrier of the Goods. Delivery of the Goods to the carrier will constitute delivery to the Customer and the risk in the Goods shall pass to the Customer at the point that the Goods are passed to the carrier. The Customer shall be responsible for insuring the Goods from the point of delivery to the carrier.

**13.2** All reasonable effort will be made by the Company to keep to any date specified for delivery but the Company accepts no liability in case of failure to do so. The Company will not be liable to make good any damage or loss arising directly or indirectly out of delay in delivery whether or not such delay is caused by the fault of the Company.

**13.3** The specification for packing the Goods will be entirely at the discretion of the Company who may pack the Goods in such manner and with such materials and in such quantities as it in its absolute discretion thinks fit and shall not be obliged to comply with the packaging instructions or requests of the Customer.

**13.4** The Company will not be liable: -

**13.4.1** For any delay, deviation, loss or detention of the Goods in the course of transit or for mis-delivery or short delivery, or

**13.4.2** For non-delivery or non-arrival of the whole or part of any consignment of Goods, or

**13.4.3** For non-delivery caused by delay in the Company receiving the Goods from its supplier.

**13.4.4** If the estimated date of delivery is not specified and acknowledged by the Company in respect of any Order or agreed between the Customer and the Company the Delivery Date will be a date within a period of twelve calendar months from the date of receipt of the Order.

**13.4.5** If the Customer is sending the Goods on, the Company will not be liable for any carriage and or transit costs incurred in sending the Goods on or in returning the Goods if for any reason the Goods are defective

## **14 Licences**

**14.1** Where necessary the Customer shall promptly obtain all necessary export or import licences, clearances and other consents necessary for the supply of the Goods.

## **15 Property and Retention of Title**

**15.1** In spite of delivery having been made property and title in the Goods shall not pass from the Company to the Customer until the Customer shall have paid in full the Price plus VAT in full and any other sums which shall be due from the Customer to the Company.

**15.2** Until property and title in the Goods passes to the Customer in accordance with Clause 15.1 above, the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The Customer shall store the Goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.

**15.3** In the event that the Goods have been inserted or incorporated into another product or equipment, the Goods remain the absolute property of the Company and the Company may remove the Goods from the other product or equipment.

**15.4** The Company may for the purpose of recovery of its Goods enter upon the premises where they are stored or where they are reasonably thought to be stored and may repossess the same in the event of any breach of these Terms and Conditions by the Customer or any act of bankruptcy, step in liquidation or appointment of a receiver or assets of the Company.

**15.5** For the purpose of exercising its remedies in clause 12.4 above the Customer acknowledges that the Company has a licence and right of access to enter upon the Customer's Premises for exercising its remedies.

**15.6** In the event of non-payment in accordance with clause 3 above, the Company has the right to trace into the proceeds of sale any of the Goods.

**15.7** Nothing in this Clause will prevent the Customer from selling in the ordinary course of his business to a third party on the condition that if the Customer owes money to the Company or the payment of such monies is subject to a dispute between the parties the Customer will:

**15.7.1** pay all monies received for such sub-sale into a separate account in trust for the Company, and

**15.7.2** transfer all the rights that they have in the sub-sale transaction to the Company

## **16 Exclusions**

**16.1** Save where the same cannot be excluded by statute: -

**16.1.1** All conditions and warranties expressed or implied are hereby expressly excluded.

**16.1.2** The Company will be under no liability for any loss or damage howsoever caused which arises in respect of indirect or consequential loss or damage.

**16.1.3** The Company will be under no liability for any loss or damage howsoever caused which arises in respect of the Customer's liability to a third party whatsoever.

**16.1.4** Without prejudice to any other term or condition, the Company will be under no liability for any loss or damage of whatever kind howsoever caused or arising unless the same is due to its wilful default.

**16.2** Without prejudice to the generality of Clause 16.1 hereof all advice and recommendations given by or on behalf of the Company to the Customer as to the method or storing, applying or using the Goods, the purpose for which the Goods may be applied and the suitability of using the Goods in any manufacturing process or in conjunction with any other materials are given without liability on the part of the Company, its servants or agents.

**16.3** Subject to the below conditions, any descriptions, proofs, drawings, prototypes and representations emanating from the Company shall be approximate only. The Customer shall not rely on them and the Company shall not be liable for their accuracy.

**16.4** In performing the services, the Customer may provide the Company with prototypes in relation to the Goods during the Contract in the Goods, subject to notifying the Company in writing of any inaccuracies in the prototypes prior to the Company delivering the Goods, the Customer shall be solely responsible for the accuracy of the Goods and shall indemnify and keep indemnified on a continuing basis and hold the Company harmless from and against any and all liabilities, losses, damages, costs, charges, expenses, (including, without limitation legal expenses), actions, proceedings, claims and demands incurred by or brought against the Company for errors and/or emissions in the Goods.

**16.5** The Company accepts no liability for any failure, delay, or defect in the services and/or Goods or default caused by supply or specification of unsuitable materials by the Customer.

**16.6** In the event that notwithstanding the provisions of clause 16 hereof, the Company is found liable for any loss or damage, that liability will in no event exceed £1000.

## **17 Cancellation**

In the event of a cancellation of an Order the Company reserves the right without prejudice to charge up to 100% of the Price for Goods held by the Company pending delivery or for Goods for which the Company cannot cancel delivery from its suppliers and up to 50% of the Price of the remaining balance. The Company also reserves the right to charge for any fluctuation in the price of any cancelled goods. In addition (but without prejudice to the foregoing provisions and without limitation) in the event of cancellation by the Customer of part only of an Order the Company shall be entitled to recalculate the Price for the uncanceled part of the Order as if it constituted the whole Order and to re-invoice the Customer accordingly.



## **18 Force Majeure**

**18.1** The due performance of the Contract is subject to cancellation or variation by the Company as a result of any act of God, war, riot or civil dispute, strikes, lock outs or other labour dispute, fire, flood, drought or accident, legislation requisitioning or other act or order by any government department or other duly constituted authority or any other cause whether of the foregoing classes or not beyond the Company's control. In such event no liability will attach to the Company by reason of cancellation or variation of any contract, and the Company may apportion its available Goods among its Customers as it thinks fit.

**18.2** Completion of the any contract for the sale and purchase of Goods governed by these Terms and Conditions may be wholly or partially suspended and the time of suspension added to the original contract in the event of stoppage, delay or interruption of work in the establishment of the Company or any of its suppliers before or during the delivery period as a result of any of the causes set out above or any causes whatsoever beyond the control of the Company.

**18.3** This clause applies, to any of the above causes occurring either in the United Kingdom or in the country of the origin of the Goods or the country of destination of delivery of the Goods.

## **19 Termination**

**19.1** If the Customer makes default in or commits any breach of its obligations pursuant to these Terms and Conditions or if the Customer commits any act of bankruptcy or has any execution or distress levied upon any of its goods or property or makes any arrangement or composition with its creditors or being a limited company if any resolution or petition to wind up its business is passed or presented or a receiver of the whole or part of its undertaking, property or assets or any part thereof is appointed, the Company will have the right forthwith to determine any contract then subsisting, without prejudice to any claim or right the Company might otherwise make or exercise.

**19.2** The Customer will notify the Company immediately on the occurrence of any of the above events.

**19.2.1** The Customer shall be in default under the Contract and shall be treated as having repudiated the Contract:

the Customer, or at any time of the Customer's affiliates fails to pay promptly any amount due and payable under or otherwise breaches the Contract or the Customer failed on first demand from the Company to pay the price for any services and/or Goods or any other amount payable under the Contract or these conditions after:-

any steps are taken with a view to the Customer, being a Company or any other Customers affiliates becoming subject to any form of winding up, administration, receivership, administrative receivership, insolvency proceedings, arrangements with creditors generally, enforcement of security or repossession, or the Customer being an individual, dies or has a Bankruptcy Order made against him or her or has a receiver appointed over the whole or any part of his or her assets or enters into or proposes to enter into any formal or informal arrangement or composition with his or her creditors, or any of the above occurs to the Customer being a partnership, or any of the above occurs in any jurisdiction in which the Customer is resident, incorporated or carries on business, or the supplier has reasonable grounds to believe that the Customer is insolvent or that the Company's rights to receive payment or its interest in the Goods is likely to be in jeopardy.

**19.2.2** If any of the above applies, the Company may, without prejudice to its other rights and remedies against the Customer by written notice to the Customer:-

(a) to suspend any performance and/or delivery made under or terminate, cancel or rescind the Contract and any other Contract between the Company and the Customer, (b) revoke any express or implied authority to sell or use any Goods, the property in which remains with the Company and require the Customer to deliver them immediately, failing which the Company, its servants and/or agents may enter premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods, (c) declare immediately due and payable any indebtedness of the Customer to the Company on any account whatsoever, (d) set off any indebtedness of the Company to the Customer against any indebtedness of the Customer to the Company in each case on any account whatsoever, exercise its lien.

## **20 Assignment and Sub-Contracting**

**20.1** The Customer may only assign, charge or otherwise dispose of all or any of its rights under these terms and conditions with the prior written consent of the Company.

## **21 Intellectual Property**

**21.1** The Customer shall, unless otherwise specifically agreed by the Company in writing, have no rights to any intellectual property owned by or licensed to the Company.

**21.2** All know-how, samples, prototypes and other items relating to the services and/or goods or their development or creation shall remain the Company's property, shall be treated as confidential and shall not be copied, re-produced or disclosed to any person, firm or company without the Company's prior written consent.

**21.3** Subject to the above, where the Company designs a product and or service for the Customer, the Customer and the Company may agree in writing for the Customer to use the design provided it is solely the Company manufacturing the product and or service.

**21.4** Copyright in all documents and drawings prepared by the Company shall remain the property of the Company. The Customer may not reproduce the design without the written authority of the Company.

## **22 Indemnity**

**22.1** The Customer undertakes to indemnify and keep indemnified on a continuing basis and hold harmless the Company from and against any and all liabilities, losses, damages, costs, charges, expenses including without limitation legal expenses, actions, proceedings and claims and demands incurred by or brought against the Company and arising directly or indirectly out of or in connection with:-

(a) any breach of any the Customer's obligations under a Contract or these conditions and/or (b) where Goods and/or services are supplied pursuant to or in connection with specification, information, data or material supplied or approved by the Company, claims and proceedings relating to copyright, trade marks, patents and other intellectual property and/or (c) errors, misleading information and/or emissions in any specifications, information, data or material supplied to the supplier or on behalf of the Customer and/or (d) subject to the above conditions claims and

proceedings brought by any third party in relation to any product in which any Goods supplied by the Company are incorporated.

### **23 Specials and Free Issue Material**

**23.1** The Company does not guarantee the suitability of materials or the design of goods and all services made specially to the Customer's requirement and differing from the Company's standard specifications even if the purpose for which the Goods are required is known to the Company.

**23.2** Where an allowance for material lost as processed scrap has been set out in Quotation, (or otherwise agreed in writing between the Company and the Customer), such losses are included in the Contract price. No such losses shall be the subject of any claim by the Customer.

**23.3** Where materials are supplied by or on behalf of the Customer to the Company, (referred to in this condition as free issue material),

**23.3.1** the Customer shall be responsible for ensuring that the free issue material is of a satisfactory quality and shall indemnify the company against loss, damage, injury or expense arising directly or indirectly from any actual or alleged fault in or correct specification of such free issue material and;

**23.3.2** the Customer shall supply with each delivery of free issue material a corresponding safety data sheet in accordance with the chemicals, (Hazard Information and Packing Regulations 1994), as amended modified or re-enacted from time to time and;

**23.3.3** the Customer shall supply with each delivery of free issue material a corresponding safety data sheet in accordance with the chemicals (Hazard Information and Packaging Regulations 1994), (as amended modified or re-enacted from time to time) and;

**23.3.4** the Company shall check such free issue material for type and quality. If the Customer requires more detailed inspections and the Company agrees in writing to carry out such inspection, the Company shall only carry them out if the Customer provides with the Company with all documentation required by the Company to carry them out. The Company shall be entitled to charge the Customer for inspections that at a rate as the Company and the Customer may agree from time to time in writing;

**23.3.5** where material is supplied free by the Customer a reasonable and fair allowance must be made for in process attrition

**23.3.6** any material supplied free by the Customer should be supplied in a suitable format for manufacturing format

### **24 Waiver**

**24.1** The Company's rights and remedies will not be prejudiced by any indulgence or forbearance to the Customer and no waiver by the Company of any breach by the Customer will operate as a waiver of any subsequent breach.

## **25 Effect of Legislation**

**25.1** The unenforceability or invalidity of any clause or sub clause of these Terms and Conditions will not affect the enforceability or validity or the remainder and if any of these Terms and Conditions or any part of one of them is rendered void, voidable or enforceable by any legislation to which it is subject it will be void, voidable or unenforceable to that extent and no further.

## **26 Proper Law**

**26.1** The Law of England will govern the construction, validity and performance of these Terms and Conditions and the parties hereby submit to the non-exclusive jurisdiction of the English Courts. The paragraph headings herein are only aids to reference and will not effect the construction of these Terms and Conditions.