

STANDARD TERMS AND CONDITIONS

1. INTERPRETATION. For the purpose of the Contract the terms listed below shall bear the respective meanings ascribed thereto:
 - a) the "Buyer" means the person, firm or company with whom the Contract is made
 - b) the "Seller" means Nottingham Microsystems, its assignees and successors in title
 - c) the "Contract" means the Contract between the Seller and the Buyer for the sale of the Goods of which these conditions form part
 - d) the "Goods" means the Goods or any part thereof agreed to be sold as described in the Sellers order acknowledgement
2. ACCEPTANCE OF ORDER AND EXPIRY DATE. Orders are accepted only upon and subject to the Seller's Conditions of Sale as printed herein. Unless expressly accepted in writing any qualification of these conditions by the Buyer in any written or printed document or otherwise shall be inapplicable. Unless previously withdrawn Seller's quotation expires one month after the date thereof. No binding Contract shall be created by the acceptance on the part of the Buyer of a quotation or offer made by the Seller until notice of the acceptance of the order in writing shall have been given by the Seller.
3. DELIVERY. Any date named by the Seller for despatch is given and intended as an estimate only is not to be of the essence of the Contract. The Buyer shall nevertheless be bound to accept the Goods ordered when available. The Seller shall not be liable in any way in respect of late despatch or delivery however caused nor shall such failure to despatch be deemed to be a breach of the Contract. Where drawings specifications instructions and materials are to be supplied, the Buyer shall supply the same in reasonable time to enable the Seller to despatch within the period named.
4. PRICES. Orders are accepted only on condition that Goods will be invoiced at the price ruling at the date of despatch. The Seller reserves the right to alter prices without notice to cover variations in the cost of raw materials labour etc. or through the Buyer's change of design or for any other reason. If variation in price occurs during the currency of an order the price of the un-despatched portion of the order outstanding at the date of such variation in price may be adjusted accordingly. A minimum charge for small orders of £25 will be made. All prices quoted exclusive of VAT where applicable.
5. TERMS OF BUSINESS. For holders of approved credit accounts payments should be made in full and received by the Seller by the due date printed on the invoice. Otherwise cash with order, cash on delivery or pro-forma invoice. The Seller reserves the right to charge interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to agreed credit terms
6. WARRANTY
 - a) The Seller warrants that the Goods shall at the time of delivery to the Buyer be free from defects in workmanship and materials. If any of the Goods do not conform to that warranty the Seller will at its opinion:
 - i. replace such Goods found not to conform to the warranty; or
 - ii) take such steps as the Seller deems necessary to bring the Goods into a state where they are free from such defect; or
 - iii) take back the Goods found not to conform to the warranty and refund the appropriate part of the purchase price; or
 - iv) make a price adjustment that is fair to both parties in relation to the failure of the Goods to conform to the warranty. PROVIDED THAT the liability of the Seller shall in no event exceed the purchase price of the defective Goods and performance of any one of the above options (as limited by this proviso) shall constitute an entire discharge of the Seller's liability under the warranty.
 - b) The foregoing warranty is conditional upon:
 - i) The Buyer giving written notice to the Seller of the alleged defect in the Goods such notice to be received by the Seller within seven days of the time when the Buyer discovers or ought to have discovered the defect and in any event within six months of the date of delivery of such Goods; and
 - ii) the Buyer affording the Seller a reasonable opportunity to inspect the Goods at its premises.
 - c) Save as provided in (a) above and Section 12 of the Goods Act 1979;
 - i) all conditions and warranties express or implied as to the quality or fitness for any purpose of the Goods are hereby expressly excluded; and

- ii) the Seller shall be under no liability for any loss or damage (whether direct indirect or consequential) howsoever arising which may be suffered by the Buyer.
 - d) In the event that notwithstanding the provisions of (a) (b) and (c) above the Seller is found liable for any loss or damage suffered by the Buyer that liability shall in no event exceed the purchase price of the Goods.
 - e) Nothing in this Contract shall affect the liability of the Seller for death or personal injury caused by its negligence.
 - f) The Seller shall not be liable to the Buyer or 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 is due to any cause beyond the Seller's reasonable control.
 - g) All quotations given to all Contracts made by the Seller or by its agents are subject to these conditions and all terms and conditions referred to by the Buyer or contained in any other receipt acceptance of quotation or otherwise brought to the notice of the Seller are hereby excluded. These conditions may be varied only by agreement in writing between the parties.
 - h) Any special requirements of the Buyer as to physical characteristics or otherwise must be set out in the Contract.
 - i) GENERAL TERMS. The SOFTWARE and the HARDWARE are designed and offered as general-purpose products, not for any user's particular purpose. You accept that no SOFTWARE or Hardware Device products are error-free
 - j) DISCLAIMER OF WARRANTY. The software is provided as is without warranty of any kind. To the maximum extent permitted by applicable law, the Seller further disclaims all warranties, including without limitation any implied warranties of merchantability, fitness for a particular purpose, and noninfringement. You assume the entire risk arising out of the use or performance of the software and documentation. Should the software prove defective, you assume the entire cost of all necessary repair or correction. The Seller shall not be responsible for any defect that results from your abuse, misuse or other conduct or conditions outside the control of the Seller. The Seller makes no representation or warranty that the information or functions contained in the software will meet your requirements or that the operation of the software will be uninterrupted, error-free, or that any software defects are correctable or will be corrected.
 - k) LIMITATION OF LIABILITY. Under no circumstances and under no legal theory, whether in tort, contract or otherwise, shall the Seller or its suppliers or resellers be liable to you or any other person for any indirect, special, incidental, or consequential damages of any character arising out of the use of or inability to use the software, the documentation or any other accompanying materials, including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, arising out of the use of or inability to use the software, even if the Seller has been informed of the possibility of such damages, or for any claim by any other party. Further, in no event shall the Seller's liability under any provision of this license agreement exceed the license fee paid to the Seller for the software. Because some states/ jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you.
7. SHORTAGES DAMAGES AND OR LOSS IN TRANSIT. All claims for damage to , or partial loss of Goods in transit must be submitted in writing to both carrier and the Seller within three days of delivery. In the case of none delivery of the whole consignment, claims must be submitted in writing to both the carrier and the Seller within seven days of receipt by the Buyer (or the Buyer's agent) of notification of despatch of the Goods. In the absence of claims within the terms mentioned above the Goods shall be deemed to have been delivered in accordance with the Contract.
8. TESTS AND INSPECTION. Unless otherwise agreed all testing and inspection specified by the Buyer or implied by the order or customary to the Seller's practice shall be at the Seller's works and shall not be final.
9. DEFECTIVE GOODS
- a) Without prejudice to Clause 7. Goods represented by the Buyer to be defective or not to conform to Contract and accepted by the Seller as such will be replaced as originally ordered if required and practicable or will be credited but shall not form the subject of any claim for work done by the Buyer transport costs consequential damages or expenses loss of profit on or any claim arising through resale or any other loss damage or expense whatsoever or howsoever incurred. No claim in respect of defective Goods will be valid unless made and the alleged defective Goods returned within thirty days of the date of despatch of the Goods nor will such claim be accepted as a reason for cancellation of the remainder of the order.
 - b) This clause shall have no application if the buyer deals as consumer insofar as death or personal injury has been caused by our negligence. The expressions "consumer" and "negligence" herein shall have the meaning ascribed to them in the Unfair Contract Terms Act 1977.

10. INFRINGEMENT OF PATENTS OR REGISTERED DESIGNS. The Buyer shall indemnify the Seller against all damages penalties costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specification which involves infringement or alleged infringement of a patent, registered design or any other intellectual property right.

11. OWNERSHIP

Title, copyright and all other proprietary rights in the circuit diagrams, drawings, software and the documentation and all parts and copies thereof shall remain vested in the Seller.

Access to the software source code is not permitted without the prior written consent of the Seller.

Any reverse engineering, de-compiling, disassembling, modifying or hooking into code will be considered a breach of copyright.

12. BUYER'S BANKRUPTCY. If the Buyer shall make default in or commit any breach of any of the obligations to the Seller or if any distress or execution shall be levied upon the Buyer or if the Buyer shall offer to make any arrangement with creditors or commit any act of bankruptcy or if any petition in bankruptcy shall be presented against him or if the Buyer is a limited company any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented the Seller shall have the right forthwith to determine by written notice posted to the Buyer any Contract then subsisting without prejudice to any claim or right the Seller might otherwise make or exercise.

13. DEFAULT OF PAYMENT. Should default be made by the Buyer in paying any due sum due under any Contract as and when it becomes due or should the Buyer be in breach in any respect of the Contract entered into the Seller shall have the right with or without notice in the discretion of the Seller either to suspend all further deliveries until the default be made good or to determine any Contract then subsisting so far as any further Goods remain to be delivered without prejudice to any claim or right the Seller might otherwise make or exercise.

14. CANCELLATION. The Buyer may cancel or suspend an order only with our written consent and agreement to terms which will indemnify us against any expense incurred, it should be clearly understood that where an order calling for scheduled delivery is placed with the Seller for a period of three months or more, the Seller will manufacture the Goods in batches equal to the requirements called for over three month periods.

15. In the event of cancellation or postponement of programmed orders we reserve the right to invoice for the difference in selling price applicable to the quantity taken up to the time of cancellation.

16. RETURN OF GOODS

a) Subject to agreement with the Seller items incorrectly ordered will be accepted for return within two months of their receipt provided they are unused and in their original wrapping. A 20% handling charge will be levied and a replacement order must be made coincident with the return of the items for credit. The minimum charge will be £2.

b) The return of Goods which are surplus to the purchaser's requirements will not normally be allowed. However a specific request in writing from the purchaser, listing the surplus Goods that he wishes to return will be considered by the Seller. The return of any such Goods will be at the absolute discretion of the Seller.

17. RISK AND PROPERTY

a) Risk in the Goods shall pass to the Buyer at the time the Goods are delivered to the Buyer in accordance with the Contract.

b) Notwithstanding delivery and the passing of risk in the Goods or any other provision of these conditions, the property and ownership in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds full payment 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.

c) Until such time as the property and ownership 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 of sale separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds, properly stored, protect and insured.

d) Until such time as the property in the Goods passes to the Buyer and provided that 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 the Goods are stored and to repossess the Goods.

- e) 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 then all monies owing by the Buyer to the Seller shall without prejudice to any other right or remedy of the Seller, forthwith become due and payable.
- f) If the Goods are destroyed by an insured risk before the Buyer has paid for them, the Buyer shall hold the Insurance proceeds as the Seller's trustee.

18. **FORCE MAJEURE.** The Seller shall not be responsible for any delays in delivery or any inability to deliver or any loss arising thereout due to fire, mechanical breakdown, strikes, lockouts, civil commotions, insurrections, war of other unforeseen or exceptional circumstances of any kind beyond the Seller's control.

19. **WITHHOLDING OF DELIVERY.** Without prejudice to any other remedies it may have the Seller reserves the right to cancel forthwith or delay performance of the Contract wholly or in part upon any breach non-observance or non-performance by the Buyer of any term condition or provision expressed or implied for the time subsisting under this or any other Contract now or for the time being subsisting between the Seller and the Buyer.

20. **TERMINATION BY THE SELLER.** The Seller shall be entitled to terminate this Contract by written notice if:

- a) The Buyer becomes insolvent, is the subject of winding up proceedings whether voluntary or involuntary goes into liquidation, enters into a composition with its creditors or has a receiver appointed over the whole or any part of its undertaking or assets or any of the foregoing events is threatened; or
- b) Any other Contract between the parties hereto is terminated by either party for whatever reason in any such circumstances or in the event of the Buyer seeking to determine the Contract the Buyer shall be liable to the Seller for the cost of manufacture by the Seller down to the date of such cancellation or termination.

21. **INDEMNITY.** The Buyer shall indemnify the Seller in respect of all damage or injury occurring to any personal property and against any actions and expenses in that connection for which the Seller may become liable in respect of the Goods sold if the damage or injury caused by the negligence of the Buyer or his servants or agents.

22. **NON CATALOGUE ORDERS.** For non-catalogue items made specifically to customers order, we reserve the right to over or under deliver up to a minimum of 5% of the total quantity ordered and invoice accordingly.

23. **CONSTRUCTION.** This contract shall be construed in all respects as an English contract and in conformity with the English Law. These terms and conditions are to be referred to as dated November 2002 and supersede any other previous terms and conditions in issue.