

Surface Technology International Ltd. - Terms and Conditions of Sale

1. INTERPRETATION

"the Bespoke Goods" means the printed circuit boards and other items to be designed by the Company for the Customer;
"the Goods" mean the items of products including Bespoke Goods designed in an Order supplied by the Company to the Customer under a Contract;
"the Company" means Surface Technology International Limited;
"the Contract" means a contract for the supply of Goods and/or Services by the Company to the Customer;
"the Customer" means either the person or company placing an order or to whom the Goods and/or Services are supplied or to whom Goods are hired;
"the Order" means the purchase order signed by the Customer for Goods and/or Services on the basis of the Quotation;
"the Quotation" means the quotation for the Goods and/or Services to be supplied by the Company to the Customer;
"the Services" means the design and testing of Bespoke Goods and/or any other services specified in the Order, supplied by the Company to the Customer under a Contract ;
"the Specification" means the functional specification in accordance with which the Bespoke Goods are to be made;
"these Conditions" means the terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer.

- 1.1. Words importing the singular only shall include the plural and vice versa and reference to persons shall include bodies corporate and vice versa.
- 1.2. The headings shall be for reference only and shall not affect the construction of these Conditions.

2. INCORPORATION

- 2.1. These Conditions apply to all Contracts to the exclusion of any other representations, conditions or terms subject to which the Contract is purported to be made or stipulated referred to or implied by the Customer and any of the terms or provisions of the Order which are inconsistent with these Conditions shall not be part of the Contract and shall not be binding on the Company.
- 2.2. No variation to the Contract or these Conditions shall be binding unless agreed in writing by the Company.

3. ORDERS

- 3.1. No Order received from a Customer by the Company shall constitute a Contract until accepted by the Company in writing.

4. PRICE AND PAYMENT

- 4.1. The price for the sale of Goods and/or supply of Services shall be the price specified in the Order subject to Condition 4.2 below.
- 4.2. Quotations are subject to acceptance within one month from their date, unless otherwise stated. Quotations must be accepted by the Customer in writing, by placing an Order. Purported acceptance of a Quotation after the expiry of the acceptance period shall be deemed to be a request by the Customer for the Company to provide a new Quotation.
- 4.3. All export prices are Freight On Board U.K. port and are exclusive of packing unless otherwise stated.
- 4.4. All prices shall be in pounds sterling, unless otherwise agreed by the Company.
- 4.5. Unless otherwise agreed, payment is due immediately. Where a Customer has previously arranged credit facilities, payment is due 30 days from date of invoice. The Customer shall pay all accounts in full and may not exercise any rights of set-off or counterclaim against invoices submitted by the Company. Time for payment shall be of the essence.
- 4.6. If the Customer fails to make payment on the due date then, without prejudice to any other right or remedy the Company may have, the Company shall be entitled to:
 - 4.6.1. cancel the Contract and any other contracts between the Company and the Customer, and/or
 - 4.6.2. suspend the provision of Services or further deliveries of the Goods to the Customer, and/or
 - 4.6.3. charge interest (both before and after any judgment) on the amount unpaid at the rate of 2.5% per month calculated on a daily basis from the date of the invoice until payment is made.
- 4.7. The Company reserves the right to issue interim invoices.

5. DELIVERY AND ACCEPTANCE

- 5.1. Delivery dates are approximate and not an essential term of the Contract unless due to the circumstances of any particular case the Company expressly agrees guaranteed delivery dates and the Contract so provides in writing. The Company however shall not be liable for any loss or damage (direct or indirect) occasioned by delayed delivery. It is the responsibility of the Customer to provide adequate insurance cover against the risk of delay if Goods and/or Services are required by a specific date.
- 5.2. In any event times for delivery given in good faith run only from the date that the Customer gives the Company sufficient information to enable it to proceed with the Order, and/or the Company has had opportunity to confirm the credit worthiness of the Customer.
- 5.3. In the event that the Customer postpones the delivery date stated on the Purchase Order, the Company shall be entitled, on the initial agreed delivery date, to invoice the Customer for the quoted value of the bought-in components. The Customer shall issue a revised Purchase Order and pay the invoice promptly.
- 5.4. Unless otherwise stated the cost of delivery is not included in the purchase price.
- 5.5. Where the cost of delivery is included the Company reserves the right to select the method of delivery (unless expressly agreed in writing).
- 5.6. Where delivery is made by post or a carrier the terms and conditions of the Post Office or the carrier used shall apply.
- 5.7. Subject to Condition 12 the Goods shall be deemed to have been delivered to and accepted by the Customer complete, in a satisfactory condition and fully in accordance with the Contract unless the Customer notifies the Company to the contrary within 72 hours of the dispatch by the Company to the Customer or the carrier (as the case may be) followed by a complete claim in writing to the Company within 14 days of the dispatch.
- 5.8. The Customer is responsible for the insurance of Goods during delivery.

6. OWNERSHIP AND RISK

- 6.1. Risk in the Goods shall pass to the Customer on delivery or if the Customer fails to take delivery of the Goods at the time when the Company has tendered delivery of the Goods or when possession is taken by a carrier (whichever is the sooner).
- 6.2. Notwithstanding delivery, property in the Goods shall not pass to the Customer until the full price of the Goods has been paid to the Company. Until property passes, the Customer shall hold the Goods as a bailee in a fiduciary capacity for the Company and shall (so far as reasonably practicable) keep the Goods properly stored and separate and readily identifiable as the property of the Company.
- 6.3. If the Customer sells the Goods in the ordinary course of its business it shall receive the proceeds of sale thereof on trust for the Company and shall keep such proceeds separate from its other monies.
- 6.4. If the price is not paid on the due date or the Company has reasonable ground for believing the Customer to be insolvent or otherwise unable to pay its debts the Customer irrevocably permits the Company to enter upon its premises to repossess any Goods to which pursuant to this Condition it has title (but without being liable for any damage caused by so doing), immediately after the Company has given notice of its intention to do so and to permit the Company to use or sell any of those Goods and so terminate (without liability to the Customer) the Customer's right to possess, use or otherwise deal in them.
- 6.5. The Customer shall keep the Goods insured to their full replacement value until payment by it to the Company has been made in full.
- 6.6. The Company shall be entitled to maintain an action for the price of the Goods notwithstanding that title in them has not passed to the Customer.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. The copyright and all other intellectual property rights of whatever nature in the Bespoke Goods and the Specification shall belong to the Customer (unless otherwise specified) provided that title to manufacturing or other techniques used, acquired or developed or belonging to the Company in the process of developing and designing the Bespoke Goods and to all documentation relating thereto shall remain with and vest in the Company.
- 7.2. The Customer shall indemnify and keep indemnified the Company against all costs, demands, claims, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use by the Company of any information or material supplied by the Customer for the purpose of enabling the Company to develop the Bespoke Goods infringes the intellectual property rights (of whatever nature) of any third party.

8. GUARANTEE

- 8.1. In respect of Goods manufactured by the Company, the Company warrants that the Goods shall for the warranty period (as defined below) be free from defects in materials or workmanship. The warranty extends only to the repair or replacement, at the sole option of the Company, of Goods which are returned carriage prepaid to the Company. Provided that the Company shall be under no liability for any defect or deficiency judged by the Company to be caused by wear and tear or of improper or unskilled handling or storage of the Goods or by any repair or attempted repair by any one other than the Company or caused by the Goods having been subjected to any unusual physical or electrical stress or in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer. The warranty period for the Company's workmanship shall be 12 months from delivery and the warranty period for all components or materials shall be 3 months from delivery.
- 8.2. In the case of components or products not of the Company's manufacture, but supplied by the Company as part of an Order, the Company shall assign (where possible) to the Customer such rights as it may have against the manufacturer, which shall be taken in extinction of and substitution for any rights which the Customer would otherwise have had against the Company.

9. LIMITATION OF LIABILITY

- 9.1. Where Goods are sold for use in the Customer's trade or business the Customer must satisfy himself that the Goods he has ordered are fit for the purpose for which the Goods are required. All advice and recommendations given by the Company during the Contract shall be made in good faith. No advice or recommendations given shall in any circumstances constitute a warranty by the Company as to the accuracy of such advice or recommendations and the Company shall not be held liable for any loss or damage that may be suffered (whether directly or indirectly) as a result of the Customer relying upon such advice or recommendations.
- 9.2. The Company cannot be held responsible for errors in the Specification, drawings, electronic data or bills of material after they have been approved or supplied by the Customer.
- 9.3. The Customer agrees that the express obligations and warranties made by the Company in these conditions are in lieu of, and to the exclusion of, any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise, relating to anything supplied, or any services provided, under or in connection with the Contract including (without limitation) any warranty as to the condition, quality, performance or fitness for purpose of anything supplied, or any services provided, or any part of them.

- 9.4. The following provisions set out the Company's entire liability to the Customer in respect of:
 - 9.4.1. any breach of its contractual obligations arising under the Contract, and
 - 9.4.2. any tortious act or omission of the Company, including negligence, arising out of or in connection with the Contract.

- 9.5. Any act or omission on the part of the Company falling within Condition 9.4 shall for the purposes of this Condition 9 be known as an "Event of Default".
- 9.6. The Company accepts liability to the extent that it results from the negligence of the Company for death or personal injury, without limit.
- 9.7. In all other cases not falling within this Condition 9 the Company's total liability (whether in contract, tort, including negligence, or otherwise) for each Event of Default or series of connected Events of Default shall not exceed the greater of £1,000,000 or the total consideration payable by the Customer to the Company for the Goods and/or Services (as the case may be) listed in the Order, provided that if, and to the extent that, the Company's liability is covered by insurance taken out by the Company, and that the insurance is operative at the time any liability arises, the Company's total liability shall be limited to the amount of such cover if greater.
- 9.8. If a number of Events of Default are connected or otherwise give rise substantially to the same loss, they shall be regarded as giving rise to only one claim under the Contract.
- 9.9. The Customer hereby agrees to afford the Company not less than 30 days (following notification thereof by the Customer) in which to remedy any Event of Default hereunder.
- 9.10. Except in the case of an Event of Default arising under Condition 9.6 above, the Company shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon the Company within one year of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 9.11. Nothing in the Agreement shall operate to limit or exclude any liability for fraud.
- 9.12. The Customer acknowledges and agrees that the allocation of risk contained in this Condition 9 is reflected in the price of the Goods and/or Services.
- 9.13. The Company shall in no circumstances (including negligence) be liable for any special, indirect or consequential loss or damage of any kind whatsoever (including, without limitation, loss of profit, contracts, bonuses, loss of or corruption to data, special loss or damage, loss of production, or loss of goodwill) even if the Company has been advised of their possibility or if such loss or damage is foreseeable.
- 9.14. The Company shall be relieved of all liability whatever and to the extent to which fulfilment of its obligation is prevented, frustrated or impeded as a consequence of conforming to any statute, or any rule, regulation, order or requisition made thereunder, force majeure, or by any cause beyond its control.

10. HEALTH AND SAFETY AT WORK ACT

- 10.1. Goods when used in normal or prescribed applications within the parameters set for mechanical and electrical performance in the technical data provided should not cause any danger or hazard to health or safety if normal engineering practices are observed and they are handled/used in applications by trained/skilled persons in accordance with the relevant legislation regulations and the accepted rules of art for the industry concerned. Where required, Goods must be properly monitored, maintained and serviced in the general interests of health and safety.

11. FORCE MAJEURE

- 11.1. Neither party shall be liable for any delay in performing, or failure to perform, any of its obligations (other than a payment obligation) under the Contract due to any cause outside its reasonable control. Such delay or failure shall not constitute a breach of the Contract and the time for performance of the affected obligation shall be extended by such period as is reasonable. Any costs or losses arising from such delay shall be borne by the party incurring the same.

12. INSTALLATION AND SERVICING

- 12.1. Where the terms of the Contract include the installation or servicing of any Goods or other items on the Customer's premises or on those of a third party then the Customer shall indemnify the Company against all liability incurred by the Company in respect of:
 - 12.1.1. any breach of the duties imposed (whether by statute, order, regulation, bye-law or common law) upon the occupier of the premises or persons employed on the premises relating to:
 - (i) the condition of the premises
 - (ii) the means of access to any place of work
 - (iii) the suitability and condition of any plant equipment or appliance used on the premises;
 - 12.1.2. the death of or personal injury to any person on the premises or loss of or damage to any real or personal property in or forming part of the premises. Provided that this indemnity shall not extend to liability for death or personal injury caused by the negligent act or default of the Company or of its employees.
- 12.2. The Customer shall prepare and make available the installation site for each of the Goods and shall permit the Company to have access to the installation site during normal working hours for the purpose of carrying out the Contract. The Company shall normally carry out work during its normal working hours but may on reasonable notice require the Customer to provide access at other times.
- 12.3. The Customer shall ensure that delivery is capable of being made on the intended delivery date as notified by the Company.
- 12.4. The Company reserves the right to install the Goods in stages.
- 12.5. The Customer shall at its own expense:
 - 12.5.1. provide electric power needed by the Company in installing and testing the Goods
 - 12.5.2. provide a suitable and safe working environment for the Company's personnel
 - 12.5.3. be responsible for ensuring that the site contains an adequate number of electrical and computer outlets and for ensuring and procuring that the outlets are safe and protected.
- 12.6. On completion of installation the Company shall carry out any tests necessary to ensure that the Goods are in working order and when such tests have been satisfactorily completed the Customer shall be deemed to have accepted the Goods and their installation.
- 12.7. If a site is not ready for installation and/or health, safety or other hazards or conditions are discovered which vary from those disclosed prior to commencement of work, the Company reserves the right to charge the Customer accordingly for any mitigation or extra works required and this charge shall be at the Company's standard hourly rate and shall include reasonable travel expenses.

13. TERMINATION

- 13.1. The Company may terminate the Contract forthwith by notice to the Customer upon the happening of any of the following events
 - 13.1.1. Where the Customer being an individual becomes bankrupt or being a corporation goes into liquidation or has a receiver administrative receiver or administrator appointed over all or any of its assets or fails to comply with the demand that is mentioned in Section 123 of the Insolvency Act 1986 or is unable or is deemed to be unable to pay its debts or makes any voluntary arrangement with its creditors;
 - 13.1.2. Where the Customer is in breach of any of these Conditions.
- 13.2. Upon termination of the Contract the Customer shall pay to the Company all amounts due (calculated by reference to the time spent at the applicable rates together with any expenses incurred on the Customer's behalf) up to the date of termination.
- 13.3. Subject to condition 11 either party may upon written notification to the other party immediately terminate this Contract where a Force Majeure event has persisted for a continuous period of three months and the parties have no commercially reasonable means of workaround to that Force Majeure event.

14. MISCELLANEOUS

- 14.1. The Contract is personal to the Customer who shall not assign or charge the benefit thereof without the prior written consent of the Company.
- 14.2. The Contract shall in all respects be construed and operated in accordance with English law and the parties acknowledge and accept the exclusive jurisdiction of the English Courts.
- 14.3. A person who is not a party to the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 has no rights to enforce any term of the Contract but this does not affect any right or remedy which exists or is available apart from that Act.
- 14.4. Any notice required or permitted to be given by either party to the other under or in connection with these Conditions shall be in writing and shall be delivered by hand or sent by first class post or facsimile to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified in writing pursuant to this provision to the other party giving the notice. Any notice sent by post shall be deemed to arrive in the case of inland mail 48 hours after posting and in the case of overseas mail 5 days after posting and in the case of notice sent by facsimile on the date of despatch if a business day or if not a business day on the next following business day.
- 14.5. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.6. The headings are inserted for convenience only and shall not affect construction of these Conditions.
- 14.7. If a stencil has not been used for over 3 years, the Company reserves the right to dispose of the stencil without prior notification.