



STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions the following expressions shall have the meanings set out as follows:-

"Conditions" means these terms and conditions of sale and purchase which, together with the Seller's Order Acknowledgement and any of the Seller's documents referred to therein, constitute the entire contract for the supply of the Goods.

"Contract " means the contract between the Seller and Customer for the sale and purchase of the Goods in accordance with these Conditions.

"Customer" means the party, body, organisation or person so named or referred to in the Order Acknowledgement.

"Delivery and Deliver" means, unless otherwise specified by the Seller in writing, available for collection at such of the Seller's premises as the seller shall determine.

"Financial Default" means the Customer is in default for seven (7) or more days in the payment of any sum whatsoever due to the Seller (whether in respect of the Goods or any other goods or services supplied at any time by the Seller to the Customer) or the Customer has a petition presented for its winding-up, or a petition for an administration order is presented, or the Customer passes a resolution for voluntary winding-up otherwise than for the purposes of a bona fide amalgamation or reconstruction or compounds with its creditors, or has a receiver or administrator appointed over all or any part of its undertaking, property or assets, or becomes bankrupt or insolvent, or suffers any distress or execution or enters into any arrangement with any one or more of its creditors or takes, or suffers any similar action in consequence of debts or carries out, or undergoes any analogous act or proceeding under foreign law.

"Goods" means the products, or any part thereof, identified in the Order Acknowledgement, made or supplied by the Seller which the Seller has agreed to sell and the Customer has agreed to purchase.

"Order Acknowledgement" means the last document issued (which in the event of any uncertainty shall be determined by reference to the date stated on such document) by the Seller to acknowledge or accept the Customer's order for the Goods, or by which the Seller has offered, quoted or tendered to supply the Goods.

"Price" means the amount specified in the Order Acknowledgement as being the sale price for the Goods as varied in accordance with these Conditions.

"Seller" means Linwave Technology Limited.

"UK" and "US" mean the United Kingdom and the United States of America respectively.

"Warranty Period" means that period prescribed in Condition 9.4.

2. PREVAILING CONDITIONS

2.1 Quotations issued by the Seller are merely invitations to treat and are not offers capable of acceptance so as to make a binding contract. All orders placed with the Seller require the Seller's written acceptance before any contract arises.

2.2 All quotations are given by the Seller and all orders issued by the Customer are accepted on these Conditions to the exclusion of all other terms, including those which may be specified or referred to in any order placed by the Customer. Any documents which emanate from the Customer which contain printed or standard conditions have been and shall be sent by the Customer and received by the Seller on the understanding that they appear on the Customer's documents because they are printed thereon but are to have no legal affect whatever and the Customer waives any right which the Customer may otherwise have to rely on such conditions.

2.3 These conditions contain the whole agreement between the Seller and Customer relating to the Goods and each party confirms to the other that in entering into the Contract it has not relied upon any representation warranty or condition not expressly provided for in these Conditions.

3. PRICE

3.1 The Seller reserves the right at any time prior to the receipt of any order to alter any price quoted without being required to give the Customer prior notice of such alteration.

3.2 The Price is exclusive of value added tax or any similar tax and all levies, duties or taxes applicable to the Goods which shall be added to and form part of the Price.

3.3 The Price includes the Seller's standard inland or export packing (as the case may be).

3.4 If the Seller's cost of performing its obligations hereunder shall be increased by the making, or amendment of any law, order, bye-law or regulation, the amount of such increase shall be added to and form part of the Price.

4. PAYMENT TERMS

4.1 Unless otherwise specified in writing by the Seller, the Customer shall make full payment of the Price in sterling in cleared funds, to the Seller within thirty (30) days of the date of the invoice for such Goods which invoice may be rendered on or at any time after Delivery of the Goods. Time for payment of the Price shall be of the essence.

4.2 Where payment of the Price, or any part, is not made in accordance with these Conditions or any payment for any other goods ordered from the Seller by the Customer is overdue then the Seller may suspend the performance of the Contract or withhold Delivery of the Goods, or any other goods, or any part and withdraw or vary credit terms in respect of the Goods or any other goods ordered until full payment of the amount unpaid is received and the Seller is reasonably satisfied that the same or a similar breach will not reoccur.

4.3 In the event that the Customer shall fail to pay any sum due under these Conditions on their due date then the Seller shall be entitled to terminate or suspend the Contract in accordance with Condition 23.

4.4 Interest shall be payable by the Customer on any amount not paid by the Customer when due, at the rate of 2% above the base lending rate from time to time of HSBC

Bank plc (calculated on a day-to-day basis) in respect of the period from the date payment fell due, until receipt by the Seller of the full amount thereof (whether before or after any judgement).

- 4.5 Unless otherwise agreed in writing, the Customer shall pay the Price for exported Goods by means of a sterling irrevocable Letter of Credit confirmed by a reputable first class UK bank acceptable to the Seller on terms stipulated by the Seller which shall include a) payment of the Price or any part thereof upon first presentation of an invoice to the confirming bank, and b) payment of any claim made pursuant to Condition 23.
- 4.6 The Seller reserves the right at any time at its discretion to demand security in such form as the Seller may reasonably require for payment before accepting any order from the Customer.

5. DELIVERY AND INSTALMENTS

- 5.1 Any date or time quoted by the Seller for Delivery is given and intended as an estimate only. The Seller shall not be liable in any manner whatsoever for any loss or damage whatsoever for failure to Deliver on such date and time of Delivery is not of the essence.
- 5.2 The Seller shall not be required to commence performance of the Contract until any required confirmed irrevocable letter of credit or any other security for payment is established, any necessary export/import documentation and or licence or consents and any necessary design or specification information has been supplied to the reasonable satisfaction of the Seller and any date estimated or agreed for Delivery shall be postponed by an equivalent period.
- 5.3 The Seller shall have the right to deliver any portion of the Goods by instalments. Each instalment delivered shall constitute a separate contract and may be invoiced separately. Default by one party with regard to any instalment (other than payment) shall not, in the absence of express provision in these Conditions, entitle the other party to terminate the Contract with regard to any instalments remaining Deliverable.
- 5.4 Where the Customer returns or refuses or fails to accept Delivery of the Goods, or any part thereof, the Seller may by notice in writing to the Customer:-
- (a) advise the Customer that such Goods are available for Delivery and invoice the Customer for such Goods and in which event the provisions of Condition 4.1 shall apply; and/or
 - (b) terminate or suspend the Contract in accordance with Condition 23.
- 5.5 Unless otherwise agreed in writing, it shall be the responsibility of the Customer to secure export/import clearance. The inability of the Seller to Deliver Goods by reason of the failure to secure or renew or the cancellation or withdrawal of any export/import licences shall be deemed, for the purposes of Condition 5.4, to be the Customer refusing to accept Delivery.

6. RISK AND PASSING OF PROPERTY

- 6.1 Risk in the Goods shall pass to the Customer when Delivery takes place, or when the Goods are available for Delivery if the Customer declines to, or notifies the Seller that the Customer will not accept Delivery.
- 6.2 Notwithstanding Condition 6.1, title to the Goods shall not pass to the Customer until whichever shall be the first to occur of the following:-
- (a) payment of the Price being received by the Seller for the Goods, and there being no other amounts then being outstanding from the Customer to the

Seller in respect of other goods supplied or services performed by the Seller;
or

- (b) the Customer sells the Goods in accordance with these Conditions, in which case title to the Goods shall be deemed to pass to the Customer immediately prior to the delivery of the Goods to the Customer's customer.

6.3 The Customer is authorised by the Seller to use or agree to sell the Goods in the ordinary course of business.

6.4 Until title to the Goods passes:-

- (a) the Customer will hold the Goods as bailee of the Seller;
- (b) the Goods shall, subject to Conditions 6.2 and 6.3, be kept separate and distinct from all other property of the Customer and of third parties and in good and substantial repair and condition and be stored in a suitable environment and in such a way as to be clearly identifiable as belonging to the Seller;
- (c) the Customer's power of sale and use contained in Condition 6.3 shall automatically cease if the Customer is or becomes in Financial Default;
- (d) upon determination of the Customer's power of sale and use pursuant to Condition 6.4(c) the Customer shall place any of the Goods in its possession or under its control and unsold at the disposal of the Seller and the Seller shall be entitled to enter upon any premises where the Goods are present whether of the Customer or a third party for the purpose of removing such Goods; and
- (e) the Seller shall at all times be entitled to appropriate any payment made by the Customer in respect of any Goods in settlement of such invoices or accounts in respect of such goods or services as the Seller may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Customer.

7. LOSS OR DAMAGE IN TRANSIT

7.1 The Seller will not be liable for loss or damage to the Goods after Delivery unless such loss or damage is demonstrated to the Seller's reasonable satisfaction to be due to faulty packing.

7.2 The Seller shall have no liability for defects or shortages or otherwise not complying with the Contract that are reasonably apparent on careful inspection if subject to Condition 10 written notification is not received by the Seller within fourteen (14) days of Delivery detailing the alleged defect or shortage and in default such Delivery and the Goods will thereafter be deemed to have been accepted by the Customer.

8. PERFORMANCE AND DESCRIPTION OF THE GOODS

8.1 Save as expressly stated by the Seller in the Order Acknowledgement, the Customer accepts sole responsibility for any Goods ordered by the Customer being sufficient and suitable for the Customer's purpose and that of the Customer's customer.

8.2 The Seller accepts no liability for failure to attain any performance figures quoted by the Seller unless these are expressly stated in writing in the Order Acknowledgement or warranted as tested to such level in the issue of the Good's data sheet current at the date of Delivery and then subject to any tolerances specified in the Order Acknowledgement or such data sheet. If the performance figures obtained on any test performed by the Seller on the Goods do not conform with those stipulated in the Order Acknowledgement or such data sheet and after the Seller has been given a

reasonable period in which to repair or replace the Goods, performance figures obtained on any test performed by the Seller do not conform, then the Customer shall be entitled to reject the Goods and to receive a refund of any money paid to the Seller on account of the Price for such Goods as are rejected. Such refund shall be in full satisfaction of the Seller's liability arising directly or indirectly from the non-performance of the Goods.

- 8.3 Goods are supplied subject to reasonable availability to the Seller of suitable material which the Seller reserves the right to vary. Unless otherwise expressly agreed in advance in writing, all specifications issued by the Seller are approximate only and do not form part of any contract.
- 8.4 Unless specifically agreed in writing to the contrary by the Seller, the Customer shall be responsible for ensuring that the Goods supplied under the Contract are used in such a manner as to ensure compliance with any Directive relating to Electromagnetic Compatibility, including EEC Council Directive 89/336/EEC (and/or its domestic equivalent of any Member State) for telecommunications equipment, and the Customer hereby indemnifies the Seller against any loss or liability howsoever incurred from or as a result of breach of any such Directive (or equivalent domestic legislation).

9. WARRANTY

- 9.1 The Seller has title to and the unencumbered right to sell the Goods.
- 9.2 The Seller will be liable for death or personal injury caused by its negligence as defined in Section 1 of the Unfair Contract Terms Act 1977
- 9.3 Subject to Conditions 9.5 and 14.4 hereof, the Seller will, free of charge, make good by repair, or at its option replace or refund any price paid for any Goods which are defective and fail to comply with Condition 8.2 under proper use, installation, handling, storage and maintenance during the Warranty Period and where such defect arises solely from the Seller's faulty design, materials or workmanship, but not fair wear and tear, provided that a) the alleged defective Goods are returned carriage paid within fourteen (14) days of the Customer becoming aware of the alleged defect with a full written report on the failure, b) this warranty is limited to the Seller's workmanship and materials where the Goods are developed to the Customer's design or instructions, c) the Customer has met all its obligations under this Contract including the obligation to make payment and provide any security or other document as specified in these Conditions and d) the Goods are returned to the Seller in a retestable condition. Goods repaired or replaced will be returned to the place where the Goods were originally Delivered. The Customer shall refund to the Seller the cost to the Seller of any replacement, repair or Delivery of the Goods effected by the Seller where the failure is not within the scope of Condition 9.3.
- 9.4 The Warranty Period shall be a period of twelve (12) calendar months commencing on the Delivery of the Goods.
- 9.5 The provisions of Condition 9.3 shall not apply to Goods not manufactured by the Seller. In such cases the Company will pass on to the Customer any warranty granted to the Seller by the original manufacturer.

10. LIMIT OF LIABILITY

Except where the Customer deals with the Seller as a consumer, the Seller's liability a) in respect of any defect in or failure of the Goods, shall be limited to those remedies as set out in Condition 9, b) in respect of patent and any other intellectual property right infringement shall be limited to those remedies set out in Condition 13, c) in respect of non-performance on Delivery, shall be limited as set out in Condition 8, d) in respect of loss or damage in transit, shall be limited as set out in Condition 7, and e) in respect of de minimus variations on Delivery, shall be limited as set out in

Condition 11, and f) in respect of Goods under development, shall be limited as set out in Conditions 14.3 and 14.4, and such liability is agreed between the parties in lieu of and shall be deemed to exclude all other warranties and conditions whether arising by common law (including tortious negligence), statute or otherwise. In particular, but without limitation, the Seller will not be liable a) for the Goods' merchantable quality and the Goods not being fit for the Customer's purpose or any purpose for which it is required, b) for loss of profit, or contract, or special, consequential or indirect loss, economic or financial loss, loss of use, lost goodwill, or spoiling or loss of data of the Customer howsoever arising, or c) for the cost of and any loss arising from, and replacement of other goods which are combined with or attached directly or indirectly to Goods which Goods do not perform satisfactorily.

11. SUPPLY OF GOODS - MINIMUM ORDER AND DEMINIMUS VARIATIONS

The Seller may from time to time prior to acceptance of the Customer's order by written notice specify a minimum quantity or value order for the Goods and the Customer's order shall be deemed to be for at least that minimum. The Customer recognises that yield of Goods vary in production. Therefore the Customer agrees to accept that a Delivery by the Seller of within 5% of the ordered quantity shall be considered as satisfactory performance of the Seller's obligation to deliver and the Customer will in such event pay the Price pro rata for the quantity of Goods delivered.

12. TERRITORIAL RESTRICTIONS

12.1 The Customer shall not without express written approval of the Seller (which shall not be unreasonably withheld) export or use the Goods or sell or hire them to a person who to his knowledge intends to export or use them outside the country of declared destination except as parts of larger assemblies or as spares or replacement parts for larger assemblies previously exported. This restriction shall not however prevent export, use, sale or hire of the Goods to or within any country of the European Community.

12.2 The Customer acknowledges that the Goods and technical information contained hereunder may have been exported under licences from the US Department of Commerce which licences limit the re-export from the UK of such Goods and technical information and of products made from or using such Goods or technical information. The Customer agrees not to deal with Goods and/or technical information in violation of such licences and/or applicable US Export Administration Regulations. The Customer acknowledges its awareness of such regulations or agrees to become familiar with them prior to any export of Goods or technical information from the UK. The Seller upon request from the Customer will provide reasonable assistance to the Customer to help the Customer obtain information and/or make application for re-export approval, if such approval is required.

13. PATENTS

Subject to Condition 14.3, the Seller shall (in lieu of all other liability to the Customer for loss where patents, copyrights, topography rights, registered designs and similar rights have been infringed by use of the Goods) compensate the Customer for all reasonably foreseeable costs expenses and liability incurred as a result of claims by owners or licensees of patents and registered designs of the country of declared first destination of the Goods granted at the date of the Contract for infringement thereof by use or sale of the Goods provided that:-

- (a) the Goods are used in accordance with the Seller's guidelines;
- (b) this liability shall not extend to infringements resulting from use by the Seller of the Customer's parts, designs or specific instructions or from use or sale of Goods in combination with other items where infringement would not have otherwise occurred;

- (c) the Customer shall immediately inform the Seller of any claim, shall make no settlement or admission and shall permit the Seller alone (and at the Seller's expense) to deal with claims; and
- (d) the Seller's liability under this Condition 13 is limited to the amount of royalties or payments in lieu thereof ordered or agreed to be paid to the owner and/or licensee of the patent or design infringed PROVIDED ALWAYS that in no case shall the Seller's liability exceed of the Price of the infringing Goods.

14. DEVELOPMENT

- 14.1 The Customer warrants that any design or instruction furnished or given by him shall not be such as will cause the Seller to infringe any patents, registered designs and similar rights in the execution of the Customer's order and the Customer hereby indemnifies the Seller against all costs expenses and liability incurred as a result of claims (including the cost thereof) by owners of patents or licensees of patents and registered designs for infringement.
- 14.2 With respect to Goods or parts of Goods which are the subject of ongoing experimental or development or prototype work undertaken by the Seller, ownership of the design of the Goods including any know-how or data relating thereto and of patents, registered designs, copyright or like instruments of privilege originated by the Seller in performing such work shall unless otherwise agreed in writing vest in the Seller absolutely.
- 14.3 Condition 13 shall not apply with respect to any Goods or parts of Goods to the extent that they are the subject of ongoing experimental or development or prototype work undertaken by the Seller. In respect of such Goods the Customer will exercise reasonable commercial vigilance subsequent to the date of the order in watching for any patent or patent applications owned or controlled by third parties which may be relevant to the objectives of the order. If at any time any relevant third party patent application comes to the notice of the Seller, the Seller shall inform the Customer and the Seller and the Customer shall jointly consider what action, if any, is to be taken.
- 14.4 The warranty set out in Condition 9.3 shall not apply with respect to Goods or parts of Goods to the extent that they are the subject of ongoing experimental or development or prototype work undertaken by the Seller. In respect of such Goods or parts of Goods the Seller shall use all reasonable endeavours consistent with commercial prudence to achieve within the estimated timescale any design specification forming part of this order but no warranty, representation or condition is given or implied that a successful result of such work will either be achieved or sustained or achieved within such timescale.

15. COPYRIGHT AND CONFIDENTIALITY

- 15.1 The copyright in all the Seller's documents (including drawings) furnished to Customer for the purpose of the Contract shall at all times remain vested in the Seller and neither they nor their contents shall be used without the Seller's written consent for any purpose other than that for which they were furnished.
- 15.2 No technical information disclosed to the Seller by the Customer relating to an order will be deemed to be a confidential or proprietary nature unless the same is the subject of a formal written agreement between the Seller and the Customer to that effect nor will the Seller be restricted in its use of such information in any way whatsoever except by prior written agreement or where such information is employed in the normal operation of patents or like instruments of privilege.

16. CUSTOMER'S MATERIALS

When the Customer provides the Seller with any item such as materials, goods, tools or the like in connection with the order, the Customer does so at his own risk and the

Seller accepts no responsibility for insuring such property except by prior arrangement in writing. Any patterns, jigs or tools provided by the Seller shall remain the Seller's property unless otherwise stated in writing by the Seller.

17. TRADEMARKS

The Customer agrees not to remove, alter or deface or allow to be removed, altered or defaced any marks, names or numbers affixed to the Goods and accessories purchased from the Seller.

18. SOFTWARE

All software supplied in whatever form is supplied under the conditions of the software agreement for the relevant software and not by way of sale and is subject in the case of the Seller's software to the Seller's relevant terms and conditions of licence and in the case of any third party software to such third party terms and conditions of licence.

19. FORCE MAJEURE

Without prejudice to the foregoing provisions of these Conditions, the Seller shall not be liable for any failure to fulfil any term of any transaction governed by these Conditions if fulfilment has been delayed, hindered or prevented by any circumstance whatsoever which is not directly within the Seller's control and if the Seller is able to fulfil some but not all of the demand for its Goods the Seller may allocate available supplies amongst its customers including subsidiary and associated companies in such manner as the Seller in its absolute discretion considers to be fair.

20. LAW AND JURISDICTION

The construction, validity and performance of the contract shall be governed by the laws of England and Wales and any claim or dispute arising therefrom shall be subject to the exclusive jurisdiction of and be determined by the English Courts.

21. ASSIGNMENT

The Customer shall not, without prior written consent, assign or sub-let any of its rights or duties under the Contract and shall furnish copies of any such assignments or sub-contracts to the Seller. The Seller shall have the right, without prior notice or penalty, and the Customer hereby consents to and shall do all acts and execute all documents necessary to enable the Seller to assign the benefit of and/or by novation or otherwise transfer the obligations arising under the Contract or any part thereof without restriction. The Seller shall give to the Customer notice of any such assignment, novation or transfer within thirty (30) days of its occurrence.

22. AMENDMENT

These Conditions may not be amended, varied or waived without the express prior written agreement of a director for the time being of the Seller.

23. DETERMINATION OF CONTRACT AND CONSEQUENCES

If the Customer shall break any provision of this Contract or any other contract with the Seller, or be in Financial Default, the Seller may (without prejudice to any other claim or remedy) suspend performance of or determine this Contract or any other Contract between the Seller and Customer by written notice with immediate effect and shall be entitled to:-

- (a) payment for the Goods already delivered, work in progress, materials ordered and tooling costs under the contract in question and all other costs and commitments incurred by the Seller, plus reasonable profit thereon.

- (b) where a discount is given to the Customer the Seller, cancel the discount and the Price plus any amount discounted will be immediately payable.

24. HEADINGS

The headings of these Conditions are for convenience only and shall have no effect on the interpretation of the Conditions.

25. THIRD PARTIES

These Conditions are not intended nor do they confer any right or benefit on any Third Party whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.