

STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF COMMERCIAL OFF THE SHELF GOODS L0289 V3

1. INTERPRETATION

1.1. Definitions. In these Conditions, the following definitions apply:
UK Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
Conditions: these terms and conditions as amended from time to time in accordance with clause 23.
Purchase Order: the contract between the Customer and the Supplier for the supply of Goods in accordance with these Conditions.
Customer: ATLAS Elektronik UK Limited registered in England and Wales with company number 5582639 and whose registered address is specified on the face of the Order.
Export License: means all relevant official approvals, licenses, authorizations and registrations including licenses for re-export and deemed export required from time to time to comply with Export Regulations.
Export Regulations: means the laws, rules, regulations and guidelines relating to export control issued by the home state of both parties and any state that the parties to this Contract give notice that they must comply with in order to perform each and every part of its obligations under this Contract.
Goods: the goods (or any part of them) set out in the Order.
Goods Specification: any specification for the Goods, including any related plans and drawings that is agreed in writing by the Customer and the Supplier.
Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.
"RoHS Directive": means Directive 2002/95/EC which relates to the use of certain hazardous substances in electrical and electronic equipment.
Supplier: the person or firm named on the face of the Order from whom the Customer purchases the Goods and/or Services and shall include any director, officers, employees and agents thereof.
"WEEE Directive": means Directive 2002/96/EC which relates to the disposal of electrical and electronic equipment.
Delivery Location: the Customer's premises or such other location as is set out in the Order or as instructed by the Customer before delivery.
Entire Agreement: this Contract and all documents referred to herein constitute the entire agreement and understanding between the Customer and the Supplier in respect of the subject matter of this Contract and supersedes all previous agreements, understanding and undertakings in such respect. Nothing in this Agreement shall limit or exclude any liability for fraudulent misrepresentation.

Governing Law and Jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales. The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

2. BASIS OF CONTRACT

2.1. The Order constitutes an offer by the Customer to purchase Goods from the Supplier in accordance with these Conditions.
 2.2. All Orders placed by the Customer under these Conditions shall be acknowledged as accepted or rejected by the Supplier in writing within five (5) Business Days of the date of the Order. Any act by the Supplier consistent with fulfilling the Order shall be constituted as deemed acceptance by the Supplier of the Order by performance. If the Supplier does not acknowledge the Order within five (5) Business Days of the date of the Order, the Order shall be deemed accepted by the Supplier. These Conditions apply to the contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
 2.3. Where special conditions are stated on the front of the Order, these conditions shall apply in addition to the Conditions shown herein save that where there are any inconsistencies between the special conditions and these Conditions the special conditions shall prevail and take precedence.

3. SUPPLY OF GOODS

3.1. The Supplier shall ensure that the Goods shall:
 a) correspond with their description and any applicable Goods Specification;
 b) be satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
 c) where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery; and
 d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and retain relevant test certificates, conformity assessments and test construction files.
 3.2. The Supplier shall ensure that at all times it has and maintains all the licenses, permissions, authorisations, contents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

4. DELIVERY OF GOODS

4.1. The Supplier shall ensure that:
 a) the Goods are packed in accordance with any instructions set out in the Order or Goods Specification. If these details are not specified, the Supplier must ensure the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 b) each delivery of the Goods is accompanied by a delivery note which will reflect the details of the Purchase Order;
 c) if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier;
 d) any other documentation, including but not limited to, Certificates of Conformity, user manuals or any documentation specifically named or referred in the Order or Goods Specification is delivered with the Goods.
 4.2. The Supplier shall deliver the Goods:
 a) on or to a maximum of three (3) Business Days before the date specified in the Order;
 b) to the Delivery Location under the terms of carriage specified in the Order.
 4.3. If the Supplier:
 a) delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or
 b) delivers more than 105% of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods; or
 c) does not deliver the documentation required under Clause 4.1 the Customer may reject the Goods;
 d) and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods
 4.4. The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 5.1.

4.5. **Title and risk in the Goods shall pass to the Customer on completion of delivery. Such passing of property and risk shall be without prejudice to any right of rejection or cancellation arising under this Contract.**

5. CUSTOMER REMEDIES

5.1. If the Supplier fails to deliver the Goods by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
 a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 b) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 5.2. If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
 a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make.

6. CHARGES AND PAYMENT

6.1. The price for the Goods:
 a) shall be the price set out in the Purchase Order; and
 b) shall be inclusive of the costs of packaging, insurance, import fees and duties and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing and signed by the Customer.
 6.2. The Supplier shall invoice the Customer on or after completion of delivery.
 6.3. The Customer shall pay the invoiced amounts within thirty (30) days net end of month of the date of a correctly rendered invoice.
 6.4. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax (VAT) chargeable from time to time.
 6.5. If the Customer fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from 30 days after the payment first becomes due up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Customer disputes in good faith.
 6.6. The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier under the Contract.
 6.7. If any advance payments or instalments have been agreed in writing by the Customer, the customer shall make such payments in accordance with such agreed terms. The Supplier shall hold such payments or instalments on trust on behalf of the Customer until delivery and acceptance have been completed.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
 7.2. All Intellectual Property Rights resulting from the work carried out by the Supplier under this Contract shall exclusively vest in the Customer. The Supplier assigns to the Customer all Intellectual Property Rights in the Goods and/or Services, including the Deliverables or part thereof, created or developed in the performance of this Contract. The rights shall be assigned on its creation with full title guarantee and free from all third party rights.
 7.3. The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 7.2.
 7.4. All Customer Materials are the exclusive property of the Customer. Unless expressly agreed, the Supplier shall gain no rights to the Customer Materials.
 7.5. The Supplier warrants that neither the sale nor the use of the Goods provided as part of the Services infringe any third party Intellectual Property Rights and the Supplier shall indemnify and hold harmless the Customer in accordance with clause 19.0 for any breach of this warranty.
 7.6. The following statement shall be included by the Supplier in all documents required to be delivered under this Contract, including but not limited to drawings and other Deliverables. "This document has been produced for Atlas Elektronik UK Ltd ("AEUK") by [name of Supplier] under [contract reference] and is the sole property of AEUK. All intellectual property rights in this document vest in AEUK and this document shall not be copied, reproduced, used or modified without the express prior written permission of AEUK."
 7.7. The Parties agree that all Background Intellectual Property of either Party existing prior to the date of this Contract shall remain vested in or controlled by such Party. The Supplier grants the Customer a non-exclusive, perpetual, world-wide, irrevocable and royalty-free license (with the right to grant sub-licenses) to use the Supplier's Background Intellectual Property to the extent necessary to exploit the Intellectual Property Rights assigned by the Supplier to the Customer in accordance with this Contract.
 7.8. Neither Party shall copy, reproduce, use, modify, customise, disassemble, adapt, reverse engineer, license or sell the other Party's Intellectual Property Rights, except as otherwise expressly permitted in this Contract.

8. INDEMNITY

8.1. **THE SUPPLIER SHALL KEEP THE CUSTOMER INDEMNIFIED IN FULL AGAINST ALL COSTS, EXPENSES, DAMAGES AND LOSSES (WHETHER DIRECT OR INDIRECT), INCLUDING ANY INTEREST, FINES, LEGAL AND OTHER PROFESSIONAL FEES AND EXPENSES AWARDED AGAINST OR INCURRED OR PAID BY THE CUSTOMER AS A RESULT OF OR IN CONNECTION WITH:**
 a) ANY CLAIM MADE AGAINST THE CUSTOMER BY A THIRD PARTY FOR DEATH, PERSONAL INJURY OR DAMAGE TO PROPERTY ARISING OUT OF, OR IN CONNECTION WITH, DEFECTS IN GOODS, TO THE EXTENT THAT THE DEFECT IN THE GOODS IS ATTRIBUTABLE TO THE ACTS OR OMISSIONS OF THE SUPPLIER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS;
 b) ANY CLAIM MADE AGAINST THE CUSTOMER BY A THIRD PARTY ARISING OUT OF, OR IN CONNECTION WITH, THE SUPPLY OF GOODS, TO THE EXTENT THAT SUCH CLAIM ARISES OUT OF THE BREACH, NEGLIGENT PERFORMANCE OR FAILURE OR DELAY IN PERFORMANCE OF THE CONTRACT BY THE SUPPLIER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; AND
 c) ANY CLAIM MADE AGAINST THE CUSTOMER FOR ACTUAL OR ALLEGED INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, OR IN CONNECTION WITH, THE MANUFACTURE, SUPPLY OR USE OF THE GOODS, OR RECEIPT.
 8.2. THIS CLAUSE 8 SHALL SURVIVE TERMINATION OF THE CONTRACT.
9. CONFIDENTIALITY

9.1. The Supplier agrees to treat and keep confidential and shall not disclose to any third party all information to the Supplier through performance of this Contract.

10. TERMINATION

10.1. Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
 a) the Supplier commits a material or persistent breach of the Contract; and
 b) in respect of the supply of Goods, by giving the Supplier one (1) month written notice.

11. FORCE MAJEURE

11.1. Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. Force Majeure event may include but is not limited to acts of God, war, terrorism, fire, floods, earthquakes, pandemics and epidemics. The party seeking to claim a Force Majeure event ("non-performing party") must serve notice to the other party as soon as reasonably possible including details of the event, its effect on performance, the expected duration and the actions undertaken to mitigate the impact. The non-performing party shall take all reasonable steps to comply with its obligations under this Contract, use reasonable efforts to limit damages to the other party and to resume its performance under the Contract without delay. If the Force Majeure event prevents the Supplier from supplying the Goods and/or Services for more than eight (8) weeks, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

12. WASTE MANAGEMENT

12.1. The Supplier shall comply with all relevant UK and European regulations in respect of waste management and control. The Supplier shall support the Customer in its obligations under such regulations by providing regular reporting (in such form and substance as the Customer shall require) on waste management, including but not limited to packaging, usage data, and hazardous substances.

13. ROHS DIRECTIVE & WEEE DIRECTIVE

13.1. The Supplier shall comply with all relevant UK and European regulations relating to the use of hazardous substances in electrical and electronic equipment and the disposal of electrical and electronic equipment, including without limitation, the RoHS Directive and the WEEE Directive ("the Regulations"). In accordance with the Regulations the Supplier shall provide the Customer with full support and all necessary data in the format agreed in order to ensure the Customer is full compliant with the Regulations.

14. HAZARDOUS GOODS

14.1. The Supplier shall mark all hazardous goods with international danger symbols where they exist and clearly display the name of the material in English. Transport and other documents must include a declaration of the hazard and name of the material in English.
 14.2. Goods must be accompanied by emergency information in English in the form of written instructions labels or markings. The Supplier shall comply with the requirements of all legislation within the United Kingdom and all relevant European legislation.

15. OBSOLESCENCE

15.1. The Supplier shall have an obsolescence policy and procedure, and shall provide notification to the Customer of all Goods that are due to become obsolete. This notification shall be no less than 12 months prior to the point at which the Goods shall cease to exist and shall allow the Customer the option of an all-time buy or technical transfer in order to support the Customer's on-going business requirements. In addition, all the associated costs to maintain form, fit and function throughout the life of Goods shall be borne by the Supplier.

16. MANUFACTURING CHANGES

16.1. The Customer must be advised in writing in advance of any and all proposed changes in the specification of the Goods covered by this Contract or a change in the method of construction of the Goods to be supplied. In the event of such a notice, the Customer reserves the right to cancel this Contract or at its option to confirm this Contract whereupon the Customer's written approval to supply the Goods shall be sent to the Supplier.

17. EXPORT REGULATIONS

17.1. The parties acknowledge that compliance with Export Regulations is an express condition of this Contract. To achieve compliance with all Export Regulations the parties agree to make full disclosure at all times of all applicable Export Regulations, or other compliance obligations, which may affect the delivery or use of their products, information or the performance of their obligations under this Contract.
 17.2. The Customer agrees to provide an end user statement, where such is required to enable the Supplier to obtain the Export Licenses required to perform its obligations under this Contract. In the event that the end user differs from that originally intended or described in the end user statement, the Customer will immediately notify the Supplier in writing and the parties shall use all reasonable endeavours to obtain a revised Export License.
 17.3. The parties acknowledge that they will undertake at their own expense all necessary actions to obtain the Export Licenses and any other additional approvals required to perform their obligations under this Contract.

18. VARIATION

18.1. Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Customer.

19. COMPLIANCE

19.1. The Supplier shall:
 a) comply with all applicable laws, statutes, regulations, and code relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
 b) promptly report to the Customer and request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with this Contract.
 19.2. Breach of this Clause 19 shall be deemed a material breach of contract.

20. SUSTAINABLE PROCUREMENT

20.1. The Supplier shall take all reasonable steps to procure the observance of the economic, social and environmental legislation related to the subject matter or the execution of the Contract by any servants, employees or agents of the Supplier and any sub-suppliers engaged in the performance of the Contract.
 20.2. If the Supplier becomes aware of any potential or actual prosecution or proceedings, for criminal breaches of the economic, social and environmental legislation related to the subject matter or the execution of the Contract, against the Supplier, any servants, employees or agents of the Supplier and any sub-suppliers engaged in performance of the Contract, the Supplier shall immediately notify the Customer at the address specified in the Contract.
 20.3. Any convictions during the period of the Contract for criminal breaches of the economic, social and environmental legislation related to the subject matter or the execution of the Contract by the Supplier or any of the Supplier's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a material breach of this Contract.