

Terms and Conditions for Supply of Goods and Services

The Buyer's attention is particularly drawn to **Clause 14**.

1. Definitions

Seller	means Electronic Manufacturing Solutions Limited of Fountain House South, Horizon West, Canal View Road, Newbury, Berkshire, RG14 5XF
Buyer	the person who buys or agrees to buy the Goods/and or Services from the Seller.
Conditions	the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Seller.
Goods and/or Services	the items or Services which the Buyer agrees to buy from the Seller as set out in the Order.
Price	the price for the Goods, excluding VAT and any carriage, packaging, and insurance costs.
Force Majeure Event	has the meaning set out in clause 16.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order	the Buyer's order for the supply of Goods and/or Services, as set out in the Buyer's purchase order form OR the Buyer's written acceptance of the Seller's quotation, as the case may be.
Order Acknowledgment	the Seller's acknowledgment of the Order.
Contract	the Buyer's order for the supply of Goods and/or Services, covering multiple deliveries and exceeding 12 months.
Seller Materials	has the meaning set out in clause 12.1.6.
Grey Market	an unofficial market in goods that have not been obtained from a franchised or official supplier.

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2. **Conditions**

- 2.1 These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Goods and/or Services, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.
- 2.2 All orders for Goods and/or Services shall be deemed to be an offer by the Buyer to purchase Goods and/or Services from the Seller pursuant to these Conditions.
- 2.3 Submission of an Order by the Buyer or commencement of the Services shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 These Conditions may not be varied except by the written agreement of a Director of the Seller.
- 2.5 These Conditions represent the whole of the agreement between the Seller and the Buyer. They supersede any other conditions previously issued.
- 2.6 Once the Buyer has placed an Order, such Order shall not be amended or changed by the Buyer without the prior written consent of the Seller.

3. **Price**

- 3.1 Any prices quoted are exclusive of VAT, import duties & other local taxes. And are based on prices current at the date of order acceptance.
- 3.2 The Company reserves the right at any time prior to delivery of the goods to adjust the price to take account of any increase in the costs to it of materials, taxes, labour or services or of any currency fluctuations which increase the costs to it of goods imported into the United Kingdom.
- 3.3 Where prices quoted are based upon specifications as submitted to and or agreed with the Buyer and, after acceptance of the Company's quotation, the Buyer requires any amendments, alterations or additions to the agreed specifications, the Company reserves the right to either:
 - 3.3.1 Amend its prices to cover and include such amendments, alterations or additions, or;
 - 3.3.2 Cease to continue with the Buyer's order in which case the Buyer will be liable to compensate the Company for any material or parts purchased contracts entered into, work already completed and in hand.
- 3.4 Where agreed delivery plans are not adhered to by the Buyer, the Company reserves the right to amend the price charged in accordance with the quantities delivered.

4. **Payment and Interest**

- 4.1 Payment of the Price and VAT shall be due within [30] days of the date of the Seller's invoice, unless otherwise agreed in writing. For new customers or if the Supplier considers that the Buyer may be suffering from financial problems or if the Buyer has been previously substantially in breach of its payment obligations, the Seller reserves

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the right to require payment of the Price up front.

- 4.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of 8% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.
- 4.3 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counterclaim against invoices submitted by the Seller.
- 4.4 We may deliver goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable contract. Each instalment delivery will be a separate contract and no cancellation or termination by either party of any one contract relating to an instalment will entitle you to repudiate or cancel any other contract or instalment.
- 4.5 Each invoice raised by us to the Buyer will be payable in full, without deduction or set-off, in accordance with our standard payment terms. You agree that you will not be entitled to set off any claim against an invoice:
 - 4.5.1 unless you have notified us in writing within 14 days of delivery of any defect or shortage in the goods delivered which arises out of the supply of goods under a contract other than that which gave rise to the debt forming the subject matter of the invoice

5. **Goods and/or Services**

- 5.1 The Goods and/or Services are described in the Order.
- 5.2 The Seller reserves the right to amend or change the specification of the Goods and/or Services if required by any applicable statutory or regulatory requirements.
- 5.3 Serialisation of PCB assemblies. By default, the Seller does not apply a serial number to Printed Circuit Board assemblies (PCBa) unless specifically referenced on the BOM (bill of material) or on the customer's purchase order. This is due to the variety of formats and label materials available today. Where serialisation is required, the seller will utilise the works order (WO) number followed by five digits on a default label applied to the PCBa as requested. Where the Buyer specifically requests a different format or label type the Seller will liaise with the Buyer to confirm size, format and material required and that space is available to apply it.
- 5.4 Programmed parts. Where the Seller is required to program a part, the revision of the firmware used will be placed on the programmed device either by laser print or by physical label.
- 5.5 Free issue (FI) parts. Where the Buyer provides FI parts as part of the order, it is the responsibility of the Buyer to provide FI parts to the Seller or Seller's sub-contractor to meet EMS' requested date. Failure to do so may lead to a revision of the original acknowledged date for the final assembly, up to the quoted manufacturing time or 15 working days, whichever is greater. Unless otherwise agreed in writing due to exceptional circumstances.

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- 5.6 Free issue (FI) parts. It is the Buyers responsibility to supply FI parts suitably packaged to protect from shock & vibration damage during transit and to ensure that where applicable;
 - 5.6.1 ESD (Electrostatic Discharge) protective packaging is used.
 - 5.6.2 J-STD-033 (Handling, Packing, Shipping and Use of Moisture/Reflow Sensitive Surface Mount Devices) is followed. Also known as Moisture Sensitivity Level (MSL) parts.
 - 5.6.3 Failure to do so, may result in;
 - 5.6.3.1 Rejection of the FI parts.
 - 5.6.3.2 Additional charges, for example to bake and re-pack J-STD-033 / MSL defined parts.
- 5.7 Aged components. It is the Buyers responsibility to supply FI parts that are less than 12 months old or from the same batch of parts previously supplied.
- 5.8 Aged components. Refer to EMS' aged component policy on the EMS website.

6. **Warranties**

- 6.1 The Seller warrants that for a period of 12 months commencing on the earlier of either the date of delivery of the Goods, or the commencement of the Services (Warranty Period), the Goods and/or Services shall:
 - 6.1.1 conform with their description;
 - 6.1.2 be of satisfactory quality within the meaning of the Consumer Rights Act 2015;
 - 6.1.3 be fit for any purpose held out by the Seller; and
 - 6.1.4 be carried out in accordance with the Supply of Goods and Services Act 1982.
- 6.2 The Seller does not provide warranty or bear any responsibility for Free Issue (FI) or Goods that the Buyer instructs the Seller to procure from the 'Grey Market', this instruction can be either direct or inferred within product data files provided by the Buyer.
- 6.3 Where the Buyer initiates a warranty claim, this is to be done in writing to the Seller within the defined warranty period either of 12 months as in 6.1 or as agreed in a contract.
- 6.4 Return of Goods to the Seller is to be done first, by requesting a Return Material Authorisation (RMA) form from the Seller and placing a copy of the RMA form with the shipment.
- 6.5 The RMA form makes it clear to the Buyer that the return of Goods is done so under the understanding that the Goods are packaged adequately to protect from shock, vibration and poor transit handling and to provide protection from Electro Static Discharge (ESD), and that no modifications or repairs have been attempted.

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- 6.6 The Seller reserves the right to void warranty on the return of Goods where packaging and ESD protection is found to be inadequate and/or where modifications or repairs have been attempted.

7. **Delivery of Goods**

- 7.1 Delivery of the Goods shall be made to the Buyer's nominated address. The Buyer shall make all arrangements necessary to take delivery of the Goods on the day notified by the Seller for delivery.
- 7.2 The Seller undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date but does not guarantee to do so. Time of delivery shall not be of the essence of the contract.
- 7.3 The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods. If short delivery does take place, the Buyer may not reject the Goods but shall accept the Goods delivered as part performance of the contract, and a pro-rata adjustment to the Price shall be made.
- 7.4 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of so doing.

8. **Acceptance of the Goods**

- 8.1 The Buyer shall be deemed to have accepted the Goods and/or Services 14 days after delivery to the Buyer.
- 8.2 The Buyer shall carry out a thorough inspection of the Goods and/or Services within 14 days and give notice in writing to the seller after discovering that some or all of the Goods and/or Services do not comply with the Warranty above, the Buyer must return the Goods to the Seller at the Buyer's cost and the Seller shall, at its option, repair or replace any Goods that are defective, or refund the price of such defective Goods and/or Services.
- 8.3 Where the Buyer has accepted, or has been deemed to have accepted, the Goods and/or Services the Buyer shall not be entitled to reject Goods and/or Services which are not in accordance with the contract.

9. **Title and risk**

- 9.1 Risk shall pass on Delivery of the Goods and/or Services. For the purposes of this clause (and these Terms), "Delivery" shall mean when the Goods have been unloaded at the location specified on the purchase order and such delivery has been received by a duly authorized agent or employee.
- 9.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Seller and shall not pass to the Buyer until the amount due under the invoice for them (including interest and costs) has been paid in full.
- 9.3 Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall

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store or mark them so that they can at all times be identified as the property of the Seller.

9.4 The Seller may at any time before title passes and without any liability to the Buyer:

9.4.1 repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Buyer's right to use, sell or otherwise deal in them; and

9.4.2 for that purpose (or determining what if any Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer.

9.5 The Seller may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer.

10. **Carriage of Goods**

Carriage will be chargeable on all sales unless agreed otherwise. The seller will use an appropriate means of carriage to support the delivery and reserves the right to change the method of carriage as required to meet the agreed delivery date.

11. **Supply of Services**

11.1 The Seller shall provide the Services to the Buyer.

11.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

11.3 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.

12. **Buyer's obligations**

12.1 The Buyer shall:

12.1.1 ensure that the terms of the Order are complete and accurate;

12.1.2 co-operate with the Seller in all matters relating to the Services;

12.1.3 provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises as reasonably required by the Seller to provide the Services;

12.1.4 provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

12.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

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- 12.1.6 keep and maintain all materials, equipment, documents and other property of the Seller (Seller Materials) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation.
- 12.2 If the Seller's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (Buyer Default):
 - 12.2.1 the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - 12.2.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 12.2; and
 - 12.2.3 the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.
- 13. **Intellectual Property Rights**
 - 13.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Seller.
 - 13.2 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.
 - 13.3 All Seller Materials are the exclusive property of the Seller.
- 14. **Limitation of Liability: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
 - 14.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
 - 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents, or subcontractors;
 - 14.1.2 fraud or fraudulent misrepresentation;
 - 14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 14.1.4 defective products under the Consumer Rights Act 2015.
 - 14.2 Subject to clause 14.1:

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- 14.2.1 the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Order or Contract; and
- 14.2.2 the Seller shall under no circumstances whatsoever be liable to the Buyer, as stated in clause 14.2.1, and for any and all Free Issue parts provided by the Buyer or the Buyers representative incorporated into the Order or Contract; and
- 14.2.3 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Order or Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £2,000,000.
- 14.3 After the Warranty Period, the terms implied by the Supply of Goods and Services Act 1982 and the terms implied by the Consumer Rights Act 2015 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.4 This clause 14 shall survive termination of the Contract.
- 15. **Termination**
 - 15.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 12 months' written notice.
 - 15.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 15.2.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 180 days after receipt of notice in writing to do so;
 - 15.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply];
 - 15.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
 - 15.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

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- 15.2.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 15.2.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;
- 15.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 15.2.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 15.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.2 to clause 15.2.9 (inclusive);
- 15.2.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 15.2.12 the other party's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 15.2.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 15.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 15.4 Without limiting its other rights or remedies, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 15.2.2 to clause 15.2.13, or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 15.5 On termination of the Contract for any reason:
 - 15.5.1 the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;

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- 15.5.2 the Buyer shall return all of the Seller Materials and any Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 15.5.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 15.5.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. **Force Majeure**

- 16.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, epidemic or similar events, or default of suppliers or subcontractors.
- 16.2 The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 16.3 If the Force Majeure Event prevents the Seller from providing any of the Goods and/or Services for more than 26 weeks, the Seller shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

17. **General**

- 17.1 Notices.
 - 17.1.1 any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
 - 17.1.2 the provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 17.2 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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- 17.3 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.4 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.5 This Contract contains the entire agreement and understanding of the parties relating to the subject matter of this Contract and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral.
- 17.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Seller.
- 17.7 Governing law. This agreement 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 the law of England and Wales.
- 17.8 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

SIGNED:



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Managing Director
Electronic Manufacturing Solutions Ltd

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