

## **GENERAL CONDITIONS OF SALE**

### **LSN DIFFUSION LIMITED**

#### **1. GENERAL CONDITIONS**

These conditions apply to each and every sale and/or contract of sale (including those conducted by electronic communication) made by or on behalf of LSN Diffusion Ltd (hereinafter called the Company) except insofar as such conditions or any of them shall be excluded or varied by express written agreement between the Buyer and the Company specifying any exclusion or variation and signed for on behalf of the Company by a Director or the Secretary of the Company. Except as aforesaid no one has authority on behalf of the Company to exclude or vary each or any of the contract terms including these General Conditions and the Company will not recognise or give effect to any such purported exclusion or variation. Every sale or contract of sale made by or on behalf of the Company shall be deemed to incorporate and be subject to these General Conditions. The Company shall not be bound by any typing or clerical errors in any document issued or sent or displayed on any electronic format and it will take all reasonable steps to correct such errors as and when they are discovered.

#### **2. Orders placed via Electronic Communication**

Where orders are submitted via electronic communication they shall not result in a binding contract or be deemed to be accepted until confirmation of acceptance has been issued and orders placed may be refused by the Company without explanation

Once an order has been accepted by the Company these conditions will apply to all orders for goods negotiated via electronic communication and all other terms and conditions, expressed or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

#### **3. Instalment Deliveries**

Where delivery is to be made by instalment each and every instalment shall be paid for separately on or before the payment date expressly fixed by the contract and failure by the Buyer to pay the amount due in respect of that instalment by such date shall entitle the Company as its option to withhold delivery of all further instalments pending payment of the full amount due or to treat the contract as repudiated, in either case without prejudice to the Company's right to recover damages for the Buyer's breach. In the event of the Company withholding delivery of further instalments such instalments shall not again become deliverable until (a) the Buyer has paid the amounts due and (b) an adequate and reasonable time has elapsed for the Company to continue or fulfil the Contract. Save as aforesaid the rights and obligations of the parties in relation to each instalment shall be for all purpose deemed to amount to a separate contract and in particular any default by the Company in relation to any particular instalment shall have no effect on the rights and obligations of the parties in respect of any subsequent instalment.

#### **4. Company's Rights over Goods**

- (a) Title to the goods shall remain in the Company until they have been paid for in accordance with the terms of the Contract and in the event of the Buyer's failure to make due payment the Company shall without prejudice to its rights under Clause 2 of these General Conditions be entitled until payment in full for all such goods has been made by the Buyer to withhold delivery of any goods which are deliverable under the Contract and in respect of which payment is due and which are still in transit or in the possession of the Company or its agents.
- (b) During the exercise of the Company's right to withhold delivery under this clause the goods shall be at the sole risk of the Buyer.
- (c) The Company shall be entitled to give written notice to the Buyer that if the Buyer falls within 7 days from the date of this notice to pay such amounts as may be due to the Company in respect of any goods already delivered to the Buyer the Company shall be entitled to enter upon and re-possess the goods from the premises of the Buyer or his agents.

#### **5. Suspension of Buyer's Default**

Without prejudice to the rights of the Company under Clauses 2 and 3 of these Conditions the Company shall have the right to suspend delivery under the Contract or any balance of it remaining to be performed if any payment of any account or performance of any obligation of the Buyer or of any other company which is subsidiary of the Buyer or is wholly or partly owned by any company by which the Buyer is wholly or partly owned by any company by which the Buyer is wholly or partly owned or is otherwise in the same group of companies the Buyer to the Company under any contract whatsoever is overdue for a period of more than 7 days. In the event of such suspension delivery shall not again become due until an adequate and reasonable time has elapsed for the Company to continue or fulfil the Contract. Failure by the Buyer to pay any such account or fulfil any such obligation within a further period of 7 days after the date of such written notice shall be a repudiation of the Contract and shall entitle the Company to cancel the Contract and to recover damages in respect of such repudiation. All overdue payments shall carry interest at the rate of 8% above the Bank of England base lending rate from the due date until the date of payment.

#### **6. Goods Lost or Rejected**

Should all or any of the goods be lost or destroyed in transit or rightfully rejected by the Buyer the Company shall be the option of: -

- (a) treating the Contract as at an end so far as the goods lost or destroyed or rightfully rejected as aforesaid are concerned; or
- (b) within a reasonable time of such event being notified to it of delivery a similar quantity of goods on the contract terms. This clause shall not affect the right of the Company to hold that part of the Contract as good in respect of any portion of the said goods which may be saved and come forward.

## **7. Force Majeure**

The Company shall not be liable in damages, compensation or any other way in the event of failure or delay in delivery of the contract goods or any part thereof by reason of Fire, Abnormal Weather Conditions, Civil Commotion, Strikes, Disputes with Workmen, Lock-outs, Interference to Transport or Shipment, Perils of the Sea, Shortage of Labour or Raw Materials, Legislative or Executive Action or Decision, Breakdown of Machinery, Total or Partial Failure of Water, Electrical or other Power Supplies, or by reason of any other Accidents, Incidents or Circumstances of whatsoever kind independent of the Will of the Company its servants or agents or which are not in their power to control or by reason of any other cause of whatsoever kind supervening or intervening by reason of force majeure or by reason of any failure to supply or delay in the supply to the Company of any materials which the Company has before or after the date of the Contract agreed to purchase from any supplier for the purpose of performing this contract where the supplier has relied on any of the aforesaid force majeure events as explaining or justifying such failure or delay Without prejudice to the foregoing provisions of the Clause where the contract is affected by any of the aforesaid events the Company shall be entitled at its option to perform any or part of its obligations under the Contract in accordance with these General Conditions.

## **8. Payment Terms**

Unless otherwise agreed by the Company in writing the payment terms are 30 days net from date of invoice.

## **9. Power to Cancel**

The Company shall be entitled at any time in its absolute discretion to cancel its Contract, or any unfulfilled part thereof without any liability to pay damages or compensation (whether in money or goods of similar or any nature) if performance or further performance be impeded or the costs to the Company of performance or further performance be increased over the cost calculated at the date of entering into this Contract by reason of cancellation or shortage of supplies or difficulty or impossibility of complying with license or currency regulations anywhere or of obtaining export and/or import licenses anywhere or by reason of the inability or failure of any supplier or sub-contractor of the Company to supply to the Company goods or services required for the performance or further performance of the Contract in addition and without prejudice to any of the circumstances set out in Clause 7 of these General Conditions.

## **10. Power to Suspend**

In the event of delay arising from any of the causes set forth in Clause 6 and/or 7 of these General Conditions, the Company may without incurring any liability whatsoever suspend deliveries under the contract until the causes of delay to operate notwithstanding any express or implied condition or warranty as to time which may be contained in the contract.

## **11. Defective Goods**

- (1) If the Buyer alleges that any goods are not in accordance with the Contract then written notice to that effect shall be given to the Company within 7 days after delivery of the goods and thereafter the Buyer shall afford to the Company all reasonable facilities for proper investigations of the alleged defect or complaint. Failing such notice within the said period the goods shall be deemed to be in all respects in

accordance with the Contract and accepted by the Buyer and shall be so deemed notwithstanding that the Company may afterwards have entered into discussions and/or negotiations with the Buyer in reference to the goods. If it is found after such notice as aforesaid that any goods are not in accordance with the Contract the Company's liability shall be limited at its option either (a) to the replacement or in the Company's absolute discretion the re-processing of the goods or (b) where the purchase price has been paid in respect of the same to the refund of the purchase price to the Buyer.

- (2) Save as provided in sub-clause (a) of this Clause the Company shall be under no liability whatsoever in respect of loss or damage directly or indirectly caused by defects in the goods of any kind whatsoever or in respect of any loss or damage directly or indirectly caused by reason of the goods not being suitable for any particular purpose whether communicated to the Company or not or arising out of any technical opinions on the use or suitability or composition of materials sold by the Company which may have been given by employees or other representative of the Company, and all conditions and warranties whether express or implied by statute, Common Law or otherwise are hereby expressly excluded.
- (3) The provisions of sub-clauses (a) and (b) of the Clause shall apply to goods sent by the Company to the Buyer pursuant to the Clause by way or replacement of goods delivered under the Contract or where such goods have been re-processed by the Company.

#### **12. Limitation of Liability**

The Company shall in no circumstances be liable to pay damages or compensation to the Buyer in excess of the difference between the market value at the place of delivery on the date when delivery is due of the goods supplied and the contract prices of such goods.

#### **13. Notice of Claims**

In the event of any claim on behalf of the Buyer arising out of the Contract the Company shall be under no liability whatsoever in respect thereof unless notification in writing of such claim shall have been received by the Company within 7 days of the actual or due delivery date of the goods in such claim referred to.

#### **14. F.O.B. Sales**

Where goods are sold F.O.B. the Company shall be under no obligation to give to the Buyer the notice referred to in Section 32(3) of the Sale of Goods Act 1893.

#### **15. Laws of Contract**

The Contract shall be governed by and construed in accordance with the Laws of England and any difference of dispute arising between the Company and the Buyer shall be subject to the sole or exclusive jurisdiction of the English Courts or at the option of the Company of the Courts of any other Country where the Buyer carries on business or is incorporated.

#### **16. Supply of Goods (implied Terms) Act, 1973**

In entering into the Contract the Buyer acknowledges: -

- a. that it has considered the provisions of the Supply of Goods (implied Terms) Acts 1973.
- b. that it has carefully read and considered all the terms of the Agreement, including those which may exempt the Company from or limit or restrict its liability under any condition implied by the Sale of Goods Act 1893 as amended and the Buyer accepts that such terms are fully consistent with the

object of the Contract.

- c. that at the time of entering into this Contract the bargaining positions of the Company and the Buyer are in all the circumstances of equal strength relative to each other.
- d. that in the foregoing circumstances and having regard to the terms of the Contract it will be fair and reasonable in any litigation which may arise out of any disputes arising under the Contract for the Company to rely by way of defence on any of the terms of the Contract which may exempt the Company from or limit or restrict its liability under any condition implied by the Sale of Goods Act 1893 as amended and for orders placed and accepted via e-Sales the Electronic Commerce Regulations 2002.

#### **17. Forbearance**

The foregoing General Conditions and the Special Conditions overleaf shall not be revoked or altered in any way in their legal effect either in whole or in part by any variation or by any delay, extension of time or indulgence granted or purported to be granted on behalf of the Company all of which shall be considered as mere acts of forbearance on the part of the Company entirely without prejudice to its rights under the Contract.

#### **18. Privity of Contract**

The Company shall not be liable for the performance of any obligations at any time existing between any associate subsidiary or related firm, individual or agent of the Company and the Buyer and/or any associate subsidiary or related firm, individual or agent of the Buyer. The Buyer shall have no rights to “set off” against any sums due to the Company under the sale and/or Contract in respect of any other agreement, claim or demand whatsoever unrelated to the sale and/or Contract.

#### **19. Notices**

As notices required by these Conditions to be given to the Company shall be given in writing or by cable or telex to the address of the Company shown on the face of the Contract.

#### **20. Special Conditions**

In so far as these terms and conditions are applied to the contract between the Company and Buyer for the processing of the Buyers pans or the supply of

parts by the Company to the Buyer and known as castings, additional terms and conditions will apply as shown in the special terms and conditions for the sale of services or the treatment of Buyer parts of castings as set out separately from this documents.

#### **Third Party Rights**

21. Nothing in this Contract shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation to this Contract and no supplemental or ancillary contract to this Contract shall create any such rights unless expressly so stated in any such Contract by the Parties.

## **LSN DIFFUSION CONDITIONS OF PURCHASE**

### **1. Definitions**

In these conditions the following expressions shall have the meanings respectively assigned to them:

“The Purchaser” means LSN Diffusion Limited and having its registered office at Cilyrychan Industrial Estate, Ammanford, SA183GY.

“The Vendor” means the person, firm or company who has agreed to supply the goods.

“The Contract” means the contract entered into between the Purchaser and the Vendor for the supply of the goods.

“The Goods” means the materials, equipment, services, supplied and other items supplied by the Vendor.

### **2. General**

The Contract shall be subject to the following express terms and conditions and no variation thereto shall apply unless specifically agreed by the Purchaser in writing. All other conditions, warranties and representations whether express or implied, including any purported conditions of sale customarily attached or otherwise considered to be part of the Vendor’s standard documentation are hereby excluded.

### **3. Goods**

The Goods shall:

- (a) conform in every respect with the Purchase Order;
- (b) be of sound design, materials and workmanship;
- (c) if the purpose for which they are acquired is indicated in the Purchase Order, fit for that purpose and if not so indicated be fit for their ordinary purpose;
- (d) be in conformity with all laws and regulations pertaining thereto.

### **4. Inspection and/or testing**

- (a) Quantities, weights and dimensions ascertained by the Purchaser in the course of inspection and/or testing shall, unless otherwise proven, be considered definitive for the purposes of this Contract. The goods may be inspected and/or tested by the Purchaser at the Vendor’s premises or within 3 working days of delivery and if found defective or inferior in quality, they may be rejected in whole or in part at the sole option of the Purchaser. For any such rejected goods, the Purchaser shall have the option either to have the goods replaced by the Vendor or to exclude same from the Purchase Order, in which case any sums already made with respect to such rejected goods shall be forthwith reimbursed by the Vendor. The Purchaser shall be entitled to order such goods from another supplier and the Vendor shall reimburse the Purchaser for any additional costs thereby incurred. The foregoing shall be without prejudice to any other rights the Purchaser may have in connection with the goods and the making or failure to make any inspection of the goods shall in no way relieve the Vendor of this obligation to conform to all the requirements of the Purchase Order.

- (b) Notwithstanding the provisions of this clause the Vendor shall remain fully responsible for the Goods and any such inspection and/or testing shall not diminish or otherwise affect the Vendor's obligations under the contract.

## **5. Delivery Order**

(a) Unless otherwise agreed the price of the goods shall include packaging and free delivery to the Purchaser. The goods shall be properly packed and secured in such a manner as to reach their destination in good condition and accompanied by a delivery note.

The Vendor shall deliver the goods at the time(s), place(s) and in the manner specified in the Purchaser Order. Time shall be of the essence unless otherwise specified.

- (b) If the Goods are not delivered on the due date then without prejudice to any other rights which it may have the Purchaser reserves the right to:

- (1) cancel the Contract in whole or in part;
- (2) refuse to accept any subsequent delivery of the Goods which the Vendor attempts to make;
- (3) recover from the Vendor any expenditure reasonably incurred by the Purchaser which in obtaining the Goods in substitution from any other supplier; and
- (4) claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Vendor's failure to deliver the Goods on the due date.

(c) If Goods are delivered to the Purchaser in excess of the quantities ordered the Purchaser shall not be bound to pay for the excess and any excess shall be and shall remain at the Vendor's risk and shall be returnable at the Vendor's expense.

## **6. Property and Risk**

(a) Where the Vendor is in possession of goods belonging to the Purchaser for manufacture, repair or similar such purpose ownership in the goods shall remain at all times with the Purchaser. Otherwise property in the goods shall pass to the Purchaser at the first to occur of the following events.

- (1) When the goods or part thereof are first identifiable as being appropriated to the Purchase;
- (2) When the Purchaser pays for the goods or part thereof;
- (3) When the Goods or part thereof are delivered to the Purchaser or to a destination instructed by the Purchaser.

(b) Notwithstanding the foregoing, the risk in the goods shall remain vested in the Vendor until the goods are delivered (including off-loading).

## **7. Warranties**

- (a) If any of the Goods do not, in the reasonable opinion of the Purchaser, comply with the provisions of Clause 3 hereof or if any defect or fault originating with the design, materials or operating characteristics of any of the goods arises at any time within twelve months after the date when such item is placed in operation or twenty four months from the date of delivery whichever is the shorter, the Vendor shall at its own expense promptly carry out such operations including repairs and replacements, as may be necessary to ensure the goods comply with the provisions of Clause 3 hereof. If the fault or failure cannot be corrected, the goods shall be removed by the Vendor who shall promptly furnish satisfactory goods to the Purchaser.
- (b) If the faulty goods are not removed and satisfactory replacement goods furnished by the Vendor within such reasonable time as the Purchaser shall determine then the Purchaser shall be entitled to carry out such remedial work or provide replacement goods all at the sole risk, cost and expense of the Vendor.

## **8. Payment**

- (a) A single copy of the Vendor's invoice is to be sent to the Purchaser. It must not be included with the consignment of goods.
- (b) The Vendor's invoice shall be paid within sixty days of the end of the month of receipt by the Purchaser providing such invoice is properly drawn and is accompanied by the required supporting documents. If invoices require correction the time of payment will be computed from the date of receipt by the Purchaser of the Vendor's corrected invoice.
- (c) From any sum due to the Vendor under the Purchaser Order, the Purchaser may deduct any amount due by the Vendor to the Purchaser.
- (d) The price shown in the Purchase Order cannot be varied unless agreed in writing by the Purchaser before delivery.

## **9. Indemnity**

The Vendor shall keep the Purchaser indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Purchaser as a result of or in connection with:

- (1) defective workmanship, quality or materials; and
- (2) any claim made against the Purchaser in respect of any liability, loss, damage, injury, cost or expense sustained by the Purchaser's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of  
a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Vendor.

## **10. Infringement of Patents**

- (a) The Vendor shall fully indemnify the Purchaser against any claim, costs or expenses arising from or incurred by reason of any infringement of copyright, letters, patent, registered design, trademark or trade name in relation to the use or sale of the goods.
- (b) If the goods or part thereof involved in such claim etc. are prohibited from use the



Vendor shall at his own expense either replace or modify the goods to remove the infringement to the satisfaction of the Purchaser.

## **11. Confidentiality**

The Vendor shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Vendor by the Purchaser or its agents and any other confidential information concerning the Purchaser's business or its products which the Vendor may obtain and the Vendor shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Vendor's obligations to the Purchaser and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Vendor.

## **12. Assignment or Sub-Contracting**

The Vendor shall not, without the consent in writing of the Purchaser, assign or sub-contract the Purchase Order or any part thereof. Any such consent shall not relieve the Vendor of any of the obligations under the Purchase Order.

The Purchaser may at any time assign or sub-contract all or any part of its rights or obligations under the Purchase Order.

## **13. Termination**

(a) The Purchaser may terminate the Purchase Order in whole or in part at any time at its option. The Vendor agrees that any termination charges made as a consequence shall be limited to costs of material and labour incurred to date of termination.

(b) If the Purchaser terminates the Purchase Order due to the failure of the Vendor to comply with these conditions or due to the bankruptcy or winding up of the Vendor, the Vendor shall only be entitled to receive the amount of money due under the Purchase Order to date of termination less any sums incurred by the Purchaser as a result of having the goods satisfactorily completed by another supplier. Furthermore, the Vendor shall reimburse the Purchaser for any sum already paid in relation to any goods refused or returned to the Vendor and all associated costs incurred by the Purchaser.

## **14. Invalidity**

If any of the provisions contained in these conditions of sale become invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

## **15. Applicable Law**

The parties to the Contract do not intend that any of the terms of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not party to it.

The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.