

### 1. GENERAL

In these General Conditions of Sale, the "Company" means Brynleigh Technology Limited, Maldon, Essex, CM9 4XL, the "goods" means any item of whatsoever nature which is to be sold or supplied by the Company including services; the "Purchaser" means the person firm or body corporate which buys or has agreed to buy the goods.

These General Conditions of Sale shall apply to and form part of every contract of sale entered into by the Company. All orders are accepted and executed on the understanding that the Purchaser is bound by these General Conditions of Sale which shall govern the contract to the exclusion of any other terms and conditions subject to which any such order is accepted or purported to be accepted, or any such order is made or purported to be made, by the Purchaser.

No contract of sale shall come into being unless and until the Purchaser has accepted these General Conditions of Sale either expressly or by implication.

### 2. LIMITS OF CONTRACT

The contract includes only such goods, accessories and work as are specified in the quotation or acknowledgement accompanying these General Conditions of Sale.

### 3. PRICES

(a) The price payable for goods and services shall be the price agreed within the Company's written quotation and agreed by the Customer's written purchase order, subject to acceptance by the Company.

(b) All prices are exclusive of Value Added Tax and this will be charged at the applicable rate and recoverable by the Company in addition to the price.

(c) All invoiced price discrepancies must be notified by the Purchaser to the Company within 14 working days of the date of invoice.

### 4. PAYMENT

(a) Unless otherwise agreed in writing payment is due without deduction on or before 30 days following the date of the invoice.

(b) Where the contract provides for delivery in instalments each instalment shall be considered as a separate contract of sale.

(c) Time for payment shall be of the essence of the contract.

(d) Without prejudice to any other rights it may have the Company is entitled to charge interest at 8% above the current Bank of England base rate or such other rate of interest as shall be determined under the Late Payment of Commercial Debts (Interest) Act 1998 on any overdue payments.

(e) A Customer whose account has a 60 day balance after the 20th of the month following due date will be placed on CASH ONLY terms until the account is brought within the approved trading terms, and at which time normal credit arrangements restored.

(f) A customer whose account has a 90 day balance after the 20th of the second month following the due date will be placed on NO FURTHER SUPPLY and all technical support for unpaid goods will be withdrawn until the account is cleared in full and normal trading



conditions are restored.

(g) The Customer shall not be entitled to withhold payment or to make any deduction from the contract price without the prior written consent of the Company.

(h) Additionally and without prejudice to its other rights the Company shall be entitled to recover all direct expenses reasonably incurred by the Company in collecting or attempting to collect amounts of the price outstanding.

(i) If the Purchaser fails to make any payment when due in accordance with these General Conditions of Sale, the Company reserves the right in its absolute discretion and without prejudice to any of its other rights or remedies to suspend all further deliveries until such payment has been made in full together with any other amounts owing to the Company whether the due date for payment has been reached or not, if so requested by the Company or, at the Company's option, to cancel the balance of the order. In either case the Company shall hold the Purchaser liable for costs incurred in respect of goods in course of manufacture or ready for despatch.

(g) The Company shall be entitled to bring an action for the price or part thereof whether or not the property in the goods has passed.

#### **5. PAYMENT DISPUTES AND DEBIT NOTES**

The customer shall operate a debit note system and apply this in accordance with the company's disputes procedure. Debit notes shall include the company's relevant invoice details and be notified to the company the day they are raised and shall be considered as dated the day that they are received by the company. Debit notes for disputes more than 5 days older than the customers' payment terms will not be accepted.

Debit notes shall only be raised for the value of goods in dispute, not the whole invoice. Cash settlement will not be paid on monies incorrectly withheld by debit notes later rejected.

Debit notes may be raised for the following items:

- Pricing errors
- Delivery shortages
- Faulty goods
- Damaged goods
- Incorrect goods supplied (i.e. not as ordered)

All requests to return goods must be agreed in writing with the company prior to a debit note being raised. Debit notes can only be raised in respect of cancelled goods providing written evidence of the company's consent to the cancellation is attached to the debit note.

The company reserves the right to replace products returned as faulty, in place of issuing a credit. In circumstances where items claimed faulty have not been opened, the goods will be returned to the customer and no credit issued.

#### **6. CREDIT**

Any contract shall be subject to the Company being satisfied as to the Purchaser's credit references, and without prejudice to the generality of the foregoing, the Company may (in its absolute discretion), having informed the Purchaser that the goods are ready for despatch, refrain from delivering the goods until such time as the Purchaser tenders the purchase money to the Company together with any outstanding amounts which may be due to the Company on



any account whatsoever.

#### **7. CARRIAGE**

- (a) Prices are exclusive of carriage and insurance to the Purchaser's premises.
- (b) Packaging, carriage and VAT will be itemised separately.

#### **8. PACKING**

Where it is necessary to despatch goods in crates, cases, pallets, stillages or skids or other such packing, these items must be returned to the Company unless otherwise stated in the quote. No charge is made for any other form of packaging and no credit will be allowed for its return.

#### **9. LOSS OR DAMAGE IN TRANSIT**

When the price quoted includes delivery, the Company shall repair or replace free of charge goods damaged in transit or not delivered in accordance with the Advice Note provided that the Company is given written notification of such damage or non-delivery within such time (being not more than 7 days) as will enable the Company to comply with the carrier's conditions of carriage as affecting loss or damage in transit, or, where delivery is made by the Company's own transport, within 7 days after receipt of the Advice Note. Notwithstanding the above undertaking, the Company will only consider claims for alleged shortage if they are received within 7 working days of the receipt of the goods by the Purchaser together with sufficient information to enable the Company properly to identify the shortage including the Advice Note number, case number and condition of case. Where goods are collected by the Purchaser or the Purchaser's staff or agent no claim for shortage or damage will be considered.

#### **10. DELIVERY**

(a) Unless accepted by the Company in writing all times or dates for delivery of the goods are given in good faith but are approximate only and shall not be of the essence of the contract.

(b) All times or dates for delivery shall be calculated from the date of acceptance by the Company of the order of the Purchaser, or from the date of receipt by the Company from the Purchaser of all information, instructions and drawings as shall be necessary to enable the Company to carry out the order, whichever shall be the later.

(c) Unless otherwise stated in writing the Company shall be entitled to make partial deliveries of the goods.

#### **11. VARIATIONS**

(a) The Company shall be under no obligation to alter or vary any part of the contract or any work connected therewith. Any alteration to or addition to or amendment or other variation of the specification, including any increase or decrease in the quantity of the goods or any alteration to any drawings or to the quality, performance, weight or measurements of any goods or any alteration or variation of advised delivery schedules, shall, if requested by the Purchaser, be subject to the agreement of the Company, with such alteration or addition to the price and to delivery dates or schedules as may be required by the Company, and shall not be binding upon the Company unless and until accepted by the Company in writing.

(b) In the event of any variation or suspension of the work by the Purchaser's instructions or lack of instructions the Company shall be entitled to adjust the contract price to reflect any additional costs incurred, and to adjust delivery dates or schedules.

#### **12. STORAGE**

If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days after notification that the goods are ready for delivery or that they have been tested under Clause 14, the Purchaser shall thereupon take delivery or arrange for storage. If the Purchaser does not take delivery or arrange for storage as aforesaid, the Company shall be entitled to invoice and be paid for the goods as though the goods had been duly delivered in accordance with these General Conditions of Sale and the Company may arrange storage either at the Company's own works or elsewhere on the Purchaser's behalf and all charges incurred by the Company as a result of such delay including storage and insurance shall be payable by the Purchaser.

#### **13. PERFORMANCE**

Any data, technical information or performance figures provided by the Company are based on tests performed under standard conditions at the Company's premises. They are believed to be accurate but cannot be guaranteed under different conditions.

#### **14. INSPECTION AND TESTS**

All completed items will be visually inspected to the latest revision of IPC610 prior to despatch. Further optical or functional electronic tests will be undertaken at the request of the customer and subject to a further charge. Where these are requested after the original purchase order has been accepted, then this will constitute a separate contract with associated costs and delivery times.

#### **15. WARRANTY**

(a) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable whether in contract, tort or otherwise to the Purchaser by reason of any representation (unless fraudulent) or any implied warranty, condition or other term as to quality or fitness for purpose, or any duty at Common Law or under the express terms of the contract, and will bear no liability for any defect save as stated in this clause 17. Nor shall the Company bear any liability for any indirect, special, economic or consequential loss or damage (whether for loss of profit, loss of use, loss of production, loss of contract or otherwise) costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with supply of the goods or their use or resale by the Purchaser. Provided however that nothing in this Clause shall operate to exclude any warranty or condition implied by law as to the quality of the goods in the event that the goods when sold by the Purchaser or when sold by any person or persons to whom the Purchaser may sell the goods shall become the subject of a consumer sale as defined in the Sale of Goods Act 1979, or any statutory re-enactment or modification thereof except to the extent that any claim under such warranty or condition shall have arisen from any act or omission by the Purchaser or by any other person or persons selling the goods by way of a consumer sale

(b) The Warranty given in this Clause is subject to the following provisos, namely:

(i) that the defects shall not have arisen through fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of goods by the Purchaser without the Company's approval;

(ii) that the Purchaser shall have followed all instructions issued by the Company in relation to the goods;

(iii) that in the case of defects which would have been reasonably apparent to the Purchaser on reasonable examination of the goods on delivery, the Purchaser shall



notify the Company of the defects in writing within 14 working days of delivery;

5 of 7

(iv) that in the case of any other defects, the Purchaser shall notify the Company of the defects in writing within 7 working days of the date when the defect becomes apparent;

(v) that where in discharge of its obligations under the Warranty given in this Clause the Company agrees that the Purchaser may undertake any repair or remedial work on its behalf, the cost of such work shall be agreed in writing between the Purchaser and the Company before the commencement of any such repair or remedial work.

#### **16. REJECTION AND RETURN OF GOODS**

Unless otherwise agreed in writing, and subject to Clause 14 hereof, goods rejected as not complying with the contract must be rejected within 14 working days of delivery to the Purchaser's premises or to such other place as the Purchaser shall have specified. The Purchaser must ensure the rejected goods are properly packaged to protect them from damage caused by any of the effects of physical or chemical damage, or static electricity. The company will investigate each rejection and inform the customer of its findings in writing, whether it accepts responsibility, and its plan of remedial action.

#### **17. CANCELLATIONS**

Goods ordered on a firm order cannot be considered cancelled until written consent has been obtained from the company. Orders for which manufacturing or materials sourcing has already irrevocably commenced will not be accepted for cancellation.

Should goods be refused at the customer premises claiming that cancellation has been approved, written evidence must be given of the company's consent, or the goods will still be charged and no credit will be issued. Storage charges for non-accepted goods will also be applied.

#### **18. PATENTS**

The Purchaser will indemnify the Company against all damages penalties costs losses and expenses suffered by the Company or for which it may become liable in respect of the infringement of any intellectual property including (but without limitation) any patent copyright registered design trade mark trade name or know-how arising out of the Company's manufacture of goods in accordance with any specification design drawings or other data supplied by the Purchaser or its servants or agents.

#### **19. COPYRIGHT**

All drawings descriptions and other information submitted by the Company, together with the copyright therein shall remain the property of the Company.

#### **20. FORCE MAJEURE AND OTHER CIRCUMSTANCES**

The Company shall be entitled without liability on its part and without prejudice to its other rights, to terminate the contract or any unfulfilled part thereof, or at its option to suspend or make partial deliveries or extend the time or times for delivery, if the manufacture of the goods by the Company or the Company's suppliers, or the delivery of the goods or the performance by the Company of any of its obligations under the contract is hindered or delayed whether directly or indirectly by reason of the Purchaser failing to furnish necessary instructions or information, or by war or other hostilities, civil commotion, act of God, government action or legislation, interruption of transport, strike, lock-out or other form of industrial action (including, without limitation, labour disputes with the Company's or any sub-contractor's

employees), accidents or stoppages to works, shortage of labour materials equipment fuel or power, breakdown of machinery or any other cause whatsoever beyond the reasonable control of the Company or its sub-contractors, whether or not such cause exists at the date of the order.

#### **21. PASSING OF PROPERTY AND RISK**

(a) Risk of damage to or loss of the goods shall pass to the Purchaser in the case of goods to be delivered otherwise than at the Company's premises, at the time of delivery, or, if the Purchaser wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery of the goods.

(b) Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions the property in the goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Company to the Purchaser for which payment is then due.

(c) Until such time as the property in the goods passes to the Purchaser, the Purchaser shall hold the goods as the Company's fiduciary agent and bailee, and shall keep the goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to resell or use the goods in the ordinary course of its business.

(d) Until such time as the property in the goods passes to the Purchaser (and provided the goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Purchaser to deliver up the goods to the Company and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the goods are stored and repossess the goods.

(e) The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Purchaser does so all moneys owing by the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

#### **22. INSOLVENCY OF PURCHASER**

(a) This Clause applies if:-

(i) The Purchaser becomes insolvent or makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

(ii) An encumbrance takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Purchaser; or

(iii) The Purchaser ceases, or threatens to cease, to carry on business; or

(iv) The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.

(b) If this Clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Purchaser, and if the goods have been delivered but not paid for, the price shall become immediately due and payable



notwithstanding any previous agreement or arrangement to the contrary.

7 of 7

(c) If this Clause applies then the Purchaser shall have a duty to immediately bring to the notice of any receiver administrator or any such person or persons appointed the existence of and content of Clause 22 of these General Conditions of Sale (Passing of Property and Risk) and the rights of the Purchaser to use or trade on the Company's goods is immediately terminated and any such receiver administrator or other person or persons appointed will not be entitled to use or to trade on the Company's goods unless so authorised in writing by the Company.

**23. ARBITRATION**

If at any time any question, dispute or difference whatsoever shall arise between the Purchaser and the Company upon or in relation to or in connection with the contract, either party may give the other notice in writing of the existence of such question, dispute or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon, or failing agreement within 30 days of receipt of such notice, of some person appointed by the President for the time being of the Chartered Institute of Arbitrators. A submission to arbitration under this Clause shall be deemed to be a submission to a sole arbitrator pursuant to the Arbitration Act 1996 or any statutory modification or re-enactment thereof. Any such arbitration shall be held in London, England.

**24.** All contracts to which these General Conditions of Sale apply shall be governed by and construed in accordance with English Law.