

STANDARD TERMS & CONDITIONS OF SALES

- 1. DEFINITION**
The 'Company' shall mean Atlas Elektronik UK Limited of Meadows Road, Queensway Meadows, Newport, South Wales, NP19 4SS;
The 'Customer' shall mean the other contracting party named on the face of the Order;
The 'Products' shall include all the goods or Services supplied or provided by the Company (excluding any software which shall be the subject of a separate licence);
The 'Order' shall mean any order placed by the Customer with the Company for the Products;
The 'Contract' shall mean the agreement made between the Customer and the Company for the sale and purchase of the Products.
The "Export Control Annex" shall mean the Annex, the requirements of which are expressly included as part of these Conditions of Sale, a copy of which should be requested from the Commercial Department of the Company.
- 2. EFFECTIVENESS**
a. Notwithstanding the acceptance by the Company of the Order this Contract shall become effective only when all the following conditions have been complied with:
i. Receipt by the Company of a letter from the Customer confirming that all relevant consents import permits and licences necessary to import and pay for the Products in pounds sterling have been obtained;
ii. Confirmation by the Company that it has obtained any necessary export licence to export the Products.
iii. Where necessary, receipt by the Company of the Letter of Credit pursuant to Condition 7 below.
b. If all the above conditions are not satisfied within 45 days of the date of the Company's acceptance the Company shall have the right to amend the Contract Price and delivery dates by reasonable amounts or alternatively terminate the Order.
- 3. PRECEDENCE**
The following Conditions of Sale shall apply to any Order placed by the Customer to the exclusion of all other terms and conditions. No variation of these Conditions shall be applicable unless expressly agreed in writing by the Company.
- 4. QUOTATIONS AND ACCEPTANCE**
Except as may be otherwise stated by the Company any quotation is valid for a period of thirty (30) days from the date thereof. In any event the Order is subject to written acceptance by the Company.
- 5. PRICE**
a. The price shall be stated in the quotation or otherwise as stated in the Company's Customer Price List current at the date of the quotation.
b. Prices are strictly net with Value Added Tax (VAT) when applicable, shall be added at the appropriate level.
c. Except for agreed variations or acts or omissions of the Customer prices can only be altered if an agreed price variation formula applies to the Order or if and to the extent that the Company's costs in the performance of the Order are increased by reason of the making or amendment after the date of Order of any law or of any order regulation or by-law having the force of law which affects the Order.
- 6. EXPORT CONTROLS**
The Company and the Customer acknowledge that compliance with all applicable Export Regulations is the essence of this Contract. To achieve compliance with all statutory regulations the Company and the Customer agree to make full disclosure at all times in accordance with the terms, conditions and obligations laid out in the Company's Export Control Annex (attached at Appendix 1) which are expressly incorporated in this Contract unless otherwise agreed by the Company, in writing.
- 7. PAYMENT**
a. Unless otherwise agreed payment for shall be on a 100% net monthly account basis with payment becoming due and payable within thirty (30) days of the date of invoice. Invoices will be issued at the time of delivery except that where the Order provides for delivery to the Customer's premises and the Company is unable to despatch the Products for reasons for which the Customer is responsible. Invoices will be issued at the time when the Company notifies the Customer that the Products are ready for despatch.
b. Unless otherwise stated in the Company's quotation all payments shall be made in Pounds Sterling in London free and clear of all present and future taxes charges or deductions whatsoever through an irrevocable Letter of Credit confirmed by a first class London Clearing Bank to be established in favour of the Company and having an initial validity equal to the full delivery period plus 60 days. The Letter of Credit shall:
i. have an initial value equal to the Contract Price;
ii. be in respect of the Products;
iii. permit transshipment;
iv. permit part-shipment;
v. provide for payment by the said London Clearing Bank to the Company of 100% of the Contract Price of each shipment against presentation of commercial invoices packing list and Bill of Lading or Forwarding Agents receipts of Airway Bill in evidence of despatch of the Products or alternatively against presentation of a warehouse receipt if the Company is unable to deliver the Products as stated in Clause (c) below.
c. Notwithstanding acceptance by the Company of the Order no obligation to deliver the Products shall arise unless and until the Company is in receipt of a satisfactory Letter of Credit in accordance with (b) above.
d. The Company shall be entitled to charge interest at 3% over the base rate of Barclays Bank plc from time to time applying on any overdue payments and the Company shall be entitled to withhold further deliveries to the Customer if at any time the Customer's payments to the Company shall be in arrears.
- 8. DELIVERY AND RISK**
a. Subject to the provisions of this Condition all risks in the Products shall pass to the Customer on delivery. The Customer shall take proper care of the Products pending payment and insure them at its own cost against all risks reasonably insurable.
b. (i) For UK based customers for the shipping terms are Delivered UK mainland, unless otherwise specified.
(ii) For Export orders the shipping terms are delivery FCA Newport in accordance with Incoterms 2000, unless otherwise specified.
c. All dates and periods quoted to the Customer for delivery shall commence from the effective date of the Contract in accordance with the provisions of Clause 2 hereof provided that the Company has at that time received all necessary information and drawings to enable it to put the work in hand. If the Company fails to deliver within that time and if as a result the Customer shall have suffered direct and demonstrable loss the Company undertakes to pay for each complete month of delay liquidated damages at the rate of one half of one per cent up to a maximum of five per cent of the price of the Products in delay. Such payment shall be the Customer's sole remedy and shall be in full and final settlement of the Company's liability for delay.
d. Without prejudice to the generality hereof if the Customer fails to take delivery of the Products within 14 days after the date of notification by the Company that they are ready for delivery the Company shall be entitled to arrange storage on the Customer's behalf and all charges for storage insurance and for demurrage shall be payable by the Customer. The Products shall thereupon become the risk of the Customer.
e. In the event that the Customer fails to take delivery within two months from the aforesaid date of notification the Company without prejudice to its other rights shall be entitled to terminate the Contract.
- 9. PASSING OF TITLE**
a. Until the Company has been paid in full for the Products supplied under the Contract and any other agreement for the supply of the products:
i. the Products shall remain the property of the Company;
ii. the Customer shall act as bailee of the Company and shall have a duty to store the Products separately from all other goods and shall identify the Products as being products belonging to the Company;
iii. the Company hereby grants the Customer as fiduciary of the Company a Licence to sell the Products and the Company shall have the right to trace the proceeds of such sale.
b. In the event of any of the events set out in i - iv. below the Customer shall keep all proceeds from the sale of the Products separate from all other monies and the Customer's Licence under paragraph a. above shall automatically be revoked and the Company shall have the right to enter into the Customer's premises and repossess all of its Products and to terminate the Contract pursuant to Condition 17.
i. Payment under the Contract or any other agreement becomes overdue either in whole or in part.
ii. The threatened or actual seizure of the Products.
iii. The Customer becomes technically insolvent.
iv. The Customer makes any composition with its creditors or a liquidator receiver administrator or administrative receiver is appointed over its assets or undertaking or such proceedings or appointment is threatened or pending.
- 10. GUARANTEE**
a. The Company will subject to paragraph b. of this Condition at its option repair replace or modify free of charge any of the Products found to its satisfaction to be defective or deficient within 12 months of the date of delivery owing to faulty design materials or workmanship providing only that:
i. the Products have not been modified misused mishandled overloaded or repaired in any way by the Customer its servants or agents or used for any purpose other than that for which they were designed; and
ii. the products are maintained in accordance with the Company's procedures or instructions; and
iii. the Products are returned properly packed carriage paid to the Company's works within the said twelve (12) month period; and
iv. if the Products have been manufactured to the Customer's design or specification the defects have not arisen as a result of faulty design on the part of the Customer.
b. In the case of Products not of the Company's own manufacture the Customer is entitled only to such benefits as the Company may receive under any guarantee given to it in respect thereof by the manufacturer.
c. Repaired or replaced Products will be returned to the Customer's premises free of charge.
d. The guarantee in respect of Products so repaired replaced or modified by the Company shall terminate at the end of the original guarantee period.
e. The Guarantee given in this Condition is the only Guarantee given by the Company and any conditions or warranties including those related to but not limited to quality and fitness for purpose of the Products are hereby expressly excluded.
- 11. SPECIFICATION**
a. The Products will be supplied substantially as described in the Order but where the Company is the manufacturer the right is reserved to make design changes which however will not lower the performance of the Products nor increase the price. Where the Company is not the manufacturer the Products will be those supplied to the manufacturer's current specification and finish.
b. The Company shall use all reasonable endeavours to ensure the accuracy of technical data and literature relating to the Products.
- 12. INSPECTION AND TESTS**
The Products are carefully inspected and where practicable submitted to the Company's standard tests at its works before despatch. If tests other than those specified in the Company's quotation or tests in the presence of the Customer or its representative are required these may be charged for at the Company's option. In the event of any delay on the Customer's part in attending such tests after seven (7) days notice that the Company is ready to conduct the same the tests will proceed in the Customer's absence and shall be deemed to have been made in the Customer's presence.
- 13. PACKING**
The Products will be packed in accordance with the Company's normal specification in non returnable packing.
- 14. EXTENT OF LIABILITY**
a. The Company will indemnify the Customer against direct physical damage to the Customer's tangible property attributable solely to the negligence of the Company its agents or subcontractors but not otherwise and provided that the Company's liability in respect of such damage shall not exceed £250,000 in respect of any one event or series of connected events.
b. The Company does not exclude or limit its liability for death or personal injury caused by the negligence of the Company nor does it exclude liability for breach of Section 12 of the Sale of Goods Act 1979.
c. Subject to paragraph a. of this Condition the Company shall not be under any liability in contract tort or otherwise for any loss or damage suffered by the Customer arising out of or in connection with the supply of Products and will not save as provided in this Condition 13 be under any liability in respect of any claim made against the Customer by any third party.
d. Notwithstanding anything contained herein to the contrary the Company shall not be liable to the Customer whether by way of indemnity or by reason of breach of contract or breach of statutory duty or in tort (including but not limited to negligence) for any indirect or consequential loss or damage or loss of profits for any loss of use whether complete or partial loss of production loss of contract of the Products or loss of business profits or revenue whatsoever that may be suffered by the Customer.
e. Subject to paragraph a. of this Condition in the event that the Company is found liable for breach of contract its total liability shall not under any circumstances exceed for any breach or breaches the purchase price of the Products or £50,000 whichever is the greater.
- 15. INTELLECTUAL PROPERTY RIGHTS**
a. The Company will indemnify the Customer against any claim for infringement of letters patent registered design or copyrights by the use or sale of any Products supplied by the Company to the Customer under this Contract provided always that this indemnity shall not apply to any infringement which is due to the Company having followed a design or instruction furnished or given by the Customer or to the use of such Products in a manner or for a purpose or in a foreign country not specified by or disclosed to the Company or in association or combination with any other article or material not supplied by the Company.
b. This indemnity is conditional on the Customer making no admission in respect of such alleged infringement and on the Customer giving the Company the earliest possible notice in writing of any claim being made or action threatened or brought against the Customer and in cases where the Company so requests permitting the Company at its own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim and on the Customer fully co-operating with the Company in defending any such allegations claims or actions. The Customer on its part warrants that any design or instruction furnished or given by it shall not be such as will cause the Company to infringe any letters patent registered design or copyright in the execution of any Order.
c. In the event that it is held that there is an infringement as described in paragraph a. of this Condition the Customer agrees that the Company's total liability shall at the Company's option be either:
i. to modify the Products so that they do not infringe; or
ii. to replace the Products with non-infringing Products; or
iii. to procure for the Customer the right for the Customer to continue its use of the Products.
d. The design of the Products including in particular all software associated therewith is and remains the Company's proprietary information. The
- copyright and all other intellectual property rights are vested in the Company. The Customer shall not modify or copy the Products or any software except under licence from the Company. In any event any such modification is subject to the Company's prior written consent.
- 16. CONFIDENTIALITY**
a. All information and data in whatever form disclosed by one party to the other party shall be treated as confidential by the recipient and shall not be used other than for the purposes contemplated by any Order without the prior written consent of the other party unless such information or data in a manner provable by the party pleading these terms:
i. is or later becomes public knowledge other than by breach of the foregoing paragraph; or
ii. is in the possession of the recipient with the full right to disclose prior to receiving it from the other party; or
iii. is independently received by the recipient from a third party having the full right to disclose; or
iv. was developed at any time independently of any disclosure by the other party.
b. Each party agrees to limit the disclosure of any information to those of its employees who have a need to know for the purposes of any Order such employees to be made aware of the obligations of confidentiality.
c. The provisions of paragraph a. of this Condition shall survive the termination of the Contract for a period of five years.
- 17. FORCE MAJEURE**
Neither Party shall be liable for any delay or failure to meet its obligations under the Contract due to any cause outside its reasonable control or due to any of the following: Acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, refusal or revocation of any licence, power failure, fire or the lack of availability of materials.
- 18. TERMINATION**
a. Either party may terminate the Contract forthwith by notice in writing if:
i. the other party goes into liquidation (other than for the purposes of amalgamation or reconstruction) or becomes insolvent or has a receiver administrative receiver or administrator appointed over any or all of the party's assets or if any other such action is taken in consequence of the party's debt;
ii. the other party is in material breach of its obligations herein and in the event that such breach is capable of remedy the defaulting party does not remedy such breach within thirty days of the non-defaulting party's notice requiring such remedy.
b. Termination shall be without prejudice to the rights and remedies of either party that may have accrued prior to such termination.
c. In the event that any application for a U.K. Export licence or any other application to Export is rejected then the Company will work with the Customer to resolve the difficulties in obtaining an Export Licence. Should resolution not be possible the Company may Terminate the Contract for Convenience with no liability for any direct or in-direct costs incurred by the Customer.
- 19. MARKINGS**
The Customer will not alter remove or obliterate whether wholly or partially any name or trademark upon the Products or other material supplied by the Company nor add to the Products or other material so marked any other name or trademark or any other description without the prior written consent of the Company.
- 20. AMENDMENTS AND CANCELLATION**
Once accepted by the Company no Order can be amended or cancelled except with the prior written consent of the Company and upon terms which fully compensate the Company.
- 21. ORIGIN OF PRODUCTS**
The Company makes no representation and gives no warranty in respect of the place of origin or manufacture of the Products or any part thereof.
- 22. SOFTWARE**
a. Element Software
Under the Contract the Company will grant the Customer a non-exclusive non transferable licence to use the specified element software incorporated in the Products. The Customer shall not modify disassemble decompile or copy the software or otherwise make available the software or any associated material or documentation to any third party without the Company's prior written consent.
b. Element Management Software
The licence terms and associated charges are as detailed in the Company's Customer Software Licence Agreement.
Hardware & Software Upgrades
c. Any indication by the Company of future availability of features is subject to change without notice both in respect of content and time scale. Unless otherwise stated in the Company's quotation all future hardware and/or software upgrades will only be available at prices and upon terms and conditions to be determined at the time when such upgrades become available.
- 23. REPRESENTATIONS**
These Conditions are personal to the parties and supersede and expressly exclude all previous conditions understandings commitments agreements or representations whatsoever whether oral or in writing.
- 24. NOTICES**
All notices required or permitted to be given under the Contract shall be in writing and sent by first class letter or facsimile to the address set out herein or to such other address as the receiving party may from time to time designate. Subject to evidence to the contrary notices sent by first class post shall be deemed to have been served three business days after the date of posting and notices sent by facsimile shall be deemed to have been served the next business day following transmission.
- 25. SEVERABILITY**
If any term part or provision of these Conditions are held by a court of competent jurisdiction to be invalid void or otherwise unenforceable as being contrary to applicable law or public policy such provision shall to the extent possible be construed in a manner to be enforceable and the remaining provisions hereof shall remain in full force and effect and in no way be affected impaired or invalidated except when by reason thereof the fundamental nature of the Contract is thereby frustrated.
- 26. HEADINGS**
These headings are provided for convenience only and shall not contribute to or affect the meaning or construction of these Conditions.
- 27. WAIVER**
The failure of either Party hereto at any time to enforce any Condition shall in no way affect its right thereafter to require complete performance by the other Party hereto nor shall the waiver of any breach of the Condition be taken or held to be a waiver of the Condition. Any waiver to be effective must be in writing.
- 28. GOVERNING LAW**
These Conditions and the Order shall be governed and construed in all respects in accordance with the Laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

ADDITIONAL TERMS AND CONDITIONS WHERE THE CONTRACT INCLUDES SERVICES:

The Company will provide Services which may include customer application engineering installation supervision installation commissioning and training.

29. RESPONSIBILITIES OF THE COMPANY

- a. The Company shall use all reasonable endeavours to ensure that personnel provided to carry out the Services possess all the necessary skills and expertise to carry out the Services in a satisfactory manner. Such personnel will exercise due care and diligence in providing the Services but save for the foregoing the Company gives no warranty express or implied statutory or otherwise in respect of such Services.
- b. Personnel provided by the Company to carry out Services will at all times observe and comply with all relevant laws and to the extent practicable observe and comply with all relevant customs and working practices of the Customer.

30. RESPONSIBILITIES OF THE CUSTOMER

- Where the Services are to be performed on premises other than the Company's premises:
- a. the Customer will ensure that the premises are in a fit state for the Services to be performed and will ensure that access to such premises is available during normal working hours; and
- b. the Customer shall be responsible throughout the duration of the Services for the provision and cost of the following items:
- i. office facilities including but not limited to telephone facsimile and secretarial support;
 - ii. provision of suitable site accommodation;
 - iii. provision of all materials and equipment unless a part of the relevant Order;
 - iv. any work permits entry permits or visas required in the territory;
 - v. medical facilities as may be necessary;
 - vi. local transport for the performance of the Services;
- c. Unless otherwise agreed the Customer will indemnify the Company against the payment of any corporate taxes personal taxes or any other levies or dues which the Company may become liable to pay in the territory where the Services are being performed as a result of the performance of the Services in the territory.

31. NORMAL WORKING HOURS

Personnel provided for Services will use all reasonable endeavours to observe normal working hours and/or the reasonable requirements of the Customer.