

## PD Components Ltd. ("THE COMPANY") TERMS OF BUSINESS

- 1 General**
- 1.1 PD Components Ltd. ("The Company")
- 1.2 The customer/client ("The Buyer")
- 1.3 The vendor/sub-contractor/manufacturer or distributor ("The Supplier")
- 1.4 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at it's registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 1.5 No waiver by the Company of any breach of contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 1.6 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of these conditions and the remainder of the provisions in question shall not be affected.
- 1.7 The headings in these conditions are for convenience only and shall not affect their integration
- 1.8 The Company may license or sub-contract all or part of it's rights and obligations under any relevant contract without the Buyers consent but the Buyer may not assign, charge or otherwise dispose of any of it's rights under any relevant contract.
- 1.9 Drawings, documents and any other materials of any kind provided by the Buyer to the Company in connection with the goods shall only be retained by the Company for three months from the date of delivery of the goods unless otherwise agreed in writing (and may then give notice of its disposal or destruction at the sole discretion of the Company).
- 2 Purchases (by The Company)**
- 2.1 All orders for goods, tools and/or services purchased by the Company shall be deemed to incorporate and be subject to these terms of business to the exclusion of all other terms save only those which the Company may agree in writing.
- 2.2 All invoices for goods, tools and/or services purchased by the Company must carry the Company's purchase order number and the date of ordering to avoid delays in payment.
- 2.3 Orders for tools or prototypes purchased by the Company will not be deemed completed until acceptance of the first off samples /or prototype has been confirmed in writing and full inspection reports have been provided by the Supplier showing compliance with the design criteria.
- 2.4 Variations to the supply cost of goods and/or services purchased by the Company as stated on the Company's purchase order must be notified in writing before delivery is made. The Company reserves the right to cancel any purchase order which has been subjected to a price increase without notification.
- 3 Sales (to the Buyer)**
- 3.1 All orders accepted and work undertaken by the Company shall be deemed to incorporate and be subject to these terms of business to the exclusion of all other terms save only those which the Company may agree in writing.
- 3.2 The Company reserves the right to make an additional charge for any design or other variations notified to it by the Buyer after the acceptance of an order and to increase the contract price if, but to the extent only that, component prices shall increase between the date of the quotation on which the order is based and the date of execution of the order, changes in specification and/or changes to delivery of the goods or services so ordered.
- 3.3 Until payment in full of the Company's Invoices shall have been made by the Buyer the Company shall retain all proprietary rights including but not limited to design right, copyright and the right to apply for patent protection in respect of work undertaken by it giving rise to such rights. Further, until full payment as aforesaid shall have been made the Company shall retain title to all products produced by it for the Buyer notwithstanding delivery of the same to the Buyer. The Buyer undertakes and agrees with the Company that until full payment has been made it will keep separate and identifiable the goods delivered by the Company and will preserve the same in good condition and insure such goods to their full replacement value (being not less than the price contracted to be paid therefor)
- 3.4 The Company reserves the right to reproduce images of goods supplied within the Companies brochure, web site and marketing publications unless specifically agreed otherwise in writing.
- 4 Goods**
- 4.1 The quantity and description of the goods shall be as set out in the Company's written quotation.
- 4.2 The Buyers designs / samples shall be evaluated for volume manufacture.
- 4.3 The Company reserves the right to refuse supply of any and all components which are considered to carry a high manufacturing risk due to either design or process reliability.
- 4.4 The Buyer acknowledges that the goods are supplied to the Buyers's own design (for which the Company has no responsibility). The Buyer shall ensure that all designs provided by it to the Company comply (and production of the goods in accordance with the designs will comply) with all relevant health and safety or similar laws.
- 4.5 In any instance where the design is not suitable for manufacture, modifications to the data may be required at additional cost to the Buyer. The Company will require approval in writing from the Buyer that the modifications made to the design are acceptable and that clause 4.4 above applies before proceeding.
- 5 Undertaking**
- 5.1 The Company undertakes to source and supply goods based only on engineering data supplied by the Buyer and to comply with the stated data for the manufacture of the goods.
- 5.2 This undertaking is subject to the complete and unambiguous information supplied by the Buyer and all cost calculations and quotations shall be based on this data. Where changes amendments or additions to the data are made after quotation the Company reserves the right to amend its quoted costs to include such changes amendments and additions.
- 5.3 Quotations and estimates based on sample components shall not form a fixed quotation for supply unless agreed in writing.
- 6 Delivery / Risk**
- 6.1 Delivery dates advised are based on capacities at the time of quotation and may vary significantly with any delay in order placement. Orders will only be accepted on receipt or written authorisation by means of email surface mail or fax including the Buyers purchase order number. Verbal orders may be taken to forward schedule manufacture but confirmation in writing must be received before the Company processes the order. Goods will not be dispatched without an official copy of the purchase order.
- 6.2 Where the goods are of a UK origin or imported, The Company will arrange for the goods to be delivered by a reputable carrier to the address of the Buyer shown on the purchase order.
- 6.3 The Company will use reasonable endeavours to meet any stated delivery but will not be liable (in contract, negligence or otherwise) for any loss or damage resulting from delay however caused. The goods may be delivered in advance of the quoted delivery date.
- 6.4 Risk of the goods shall pass to the Buyer upon delivery to the Buyer's address as set out above or, if the goods are collected from the Company's premises by or on behalf of the Buyer, upon collection. The Buyer shall make all necessary arrangements to take delivery of the goods whenever tendered by the Company and if the Buyer wrongfully fails to take delivery of the goods, risk shall nevertheless pass when the goods are tendered to the Buyer.
- 6.5 The Company shall insure the goods against loss or damage during transit to the value their contract price and shall (subject to the Buyer complying with clause 6.7 below) hold on trust for the Buyer any proceeds of such policy in the event of loss or damage to the goods in transit to the extent that the price for the goods has already been paid. The Company shall have no further liability to the Buyer for any loss or damage to the goods prior to delivery.
- 6.6 The Buyer must
- (a) examine the goods within 3 days of delivery,

- (b) notify the Company and any carrier in writing giving details of any shortage or damage within 3 days after the date of delivery and of any non delivery within 7 days after the expected date of delivery,
  - (c) give the Company, any carrier and their agents a reasonable opportunity to inspect any quantities or damaged goods as delivered. If the Buyer fails to do so, the Company will not be liable for the non-delivery or short or damaged delivery, and the Buyer may not reject the goods for damaged delivery, whether caused before or after risk passes. In no event may the Buyer reject goods because not all the goods ordered are delivered.
  - (d) Where goods are imported and delivered by container/s, the container/s shall be unloaded and made ready for collection within 24 hours of delivery.
  - (e) The Buyer shall be liable for any charges for failing to unload a container/s within the agreed time.
- 6.7 The Buyer shall be deemed to have accepted the goods unless notice has been received by the Company that they are not in accordance with the contract within 3 days of the date of delivery. After acceptance the Buyer shall not be entitled to reject the goods.
- 6.10 The Company may deliver the goods by separate instalments each of which may be invoiced separately. The failure of the Buyer to pay for an instalment (or any order) on the due date for payment shall entitle the Company at its sole discretion without notice to suspend further deliveries of the goods pending payment by the Buyer and/or treat this contract as repudiated by the Buyer.
- 6.11 The Buyer must insure the goods in their full replacement value against all risks prudently insured against between risk and property passing and must on demand produce evidence of such insurance to the Company. Until the full price has been paid, the Buyer shall hold trust for the Company policy and proceeds of insurance to the extent of the unpaid price.
- 6.12 Damaged, incorrect deliveries or deliveries in dispute for goods and/or services supplied by the Company must be notified in writing to the Company within 5 days of receipt.

## 7 Property

- 7.1 Notwithstanding delivery of the goods the property in the goods shall not pass to the Buyer and full legal and beneficial ownership of the goods shall remain with the Company, until receipt by the Company of payment in full for the goods and all other goods and modification work, whether or not of the same type, supplied by the Company to the Buyer and any default interest and all other monies on any account whatsoever owed by the Buyer to the Company.
- 7.2 Pending the passing of property, the Buyer shall be responsible for the goods of the Company and must not dispose of, charge or encumber the goods or any interest therein or purport to do so, must retain possession of them in good condition and free from any lien, distress, execution or other legal process, must store them separately or mark them so that they may be readily identified as the Company's property, must inform the Company of their whereabouts on request and must return the goods to the Company on request. If the Buyer fails to do so the Company may enter the Buyer's premises and repossess the goods.
- 7.3 All goods retained by the Company at the Buyer's request must be insured by the Buyer for their full replacement value against all risks. All goods will be placed into storage subject to a monthly charge. All goods placed into storage may be subject to a refurbishment charge upon their removal.

## 8 Warranties and Liability for the Goods

- 8.1 Subject to the conditions set out below the Company warrants that the goods will correspond with the Customer's design and will be free from defect in material and workmanship for a period of twelve months from delivery.
- 8.2 The above warranty is given by the Company subject to the following conditions:
- (a) The Company shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the Customer.
  - (b) The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether verbal or writing), misuse or alteration or repair of the goods without the Company's approval.
  - (c) The Customer shall notify the alleged defect in the goods to the Company as soon as practicable after discovering the same and upon request return the goods to the Company carriage prepaid.
  - (f) The Company shall have no liability for and gives no warranty in relation to defects in any components, materials or other constituent parts of the goods produced or supplied by any third party.
  - (g) Subject as expressly provided in these conditions, all warranties, conditions or other items implied by status or common law are excluded to the fullest extent permitted by law.
- 8.3 It is acknowledged and agreed by the Buyer that as the Company cannot know of the intended use of all its products and/or the applications to which such products will be put and/or the range of conditions under which such products may be expected to operate, the Company cannot accept responsibility and hereby excludes all liability for any loss or damage of a consequential or indirect nature (including loss of profits) howsoever such loss or damage may occur. For the avoidance of doubt the cost of and any loss of profits or other damage or expense relating to other equipment into which the Company's products are incorporated or may form part shall for the purpose of this clause be deemed to be of a consequential or indirect nature.
- 8.4 Where any valid claim in respect of any goods which is based on any defect in the quality or conditions of the goods of their failure to meet specification is notified to the Company in accordance with these conditions, the Company shall be entitled to repair, rectify or replace the goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the goods (or a proportional part of the price). A replacement of the goods or a part thereof or repairs made to the goods during the original warranty period shall be warranted until the expiry of the original warranty period.
- 8.5 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any loss including without limitation consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by negligence of the Company, its employees or agents or otherwise) which arise out of or in conjunction with the supply of the goods or their use or resale by the Buyer, except as expressly provided in these conditions.
- 8.6 The Company shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing strikes, lock-outs or other industrial action or trade disputes (whether involving employees or the Company or a third party) shall be regarded as a cause beyond the Company's reasonable control.

**9 Payments and Securities**

- 9.1 The Company's terms of payments are, unless otherwise agreed in writing, within 10 days of the date of invoice for services.
- 9.2 Any queries on invoices must be made in writing within 5 days of the invoice date.
- 9.3 The Company reserves the right to charge interest on all overdue accounts from the Buyer at a rate of 8% above the base rate for the time being of Bank of England. Interest charges will be compounded from the date of the original invoice.
- 9.4 Tooling and prototypes paid for by the Buyer shall be and remain the property of the Buyer save that the Company shall be entitled to exercise a lien thereover and retain the same until all moneys due from the Buyer to the Company (including any interest thereon) shall have been paid.
- 9.5 Where the Company requires staged payments for services, tooling or goods supplied, receipt of each staged payment shall be received within 10 working days from the date of the invoice.
- 9.6 The Company reserves the right to suspend further work without liability until such payments have been received.

**9.7 Tooling**

- 9.7.1 Orders for tooling shall require securities from the Buyer in the form of a Bankers Performance Bond or Letter of Credit or Escrow agreement for the full amount of the purchase order. On agreement of the tooling charges a pro-forma invoice shall be issued for not less than 50% of the total charge payable on placement of the purchase order.
- 9.7.2 The balance of the tooling charges shall be invoiced on sample approval, payable within 10 days of the invoice date.
- 9.7.3 The Company reserves the right to apply a charge for cancellation of any order for tooling by the Buyer after acceptance of the order or the commencement of manufacture. This charge shall be the outstanding balance of costs incurred + VAT not exceeding the overall value of the order.

**9.8 Prototypes**

- 9.8.1 Orders for prototypes shall require securities from the Buyer in the form of a Bankers Performance Bond or Letter of Credit or Escrow agreement for the full amount of the purchase order. On agreement of the prototype charges a pro-forma invoice shall be issued for 50% of the total charge payable on placement of the purchase order.
- 9.8.2 The balance of the prototype charges shall be invoiced on approval, payable within 30 days of the invoice date.

**9.9 Components/Goods**

- 9.9.1 Orders for components/goods shall require securities from the Buyer in the form of a Bankers Performance Bond or Letter of Credit or Escrow agreement for the full amount of the purchase order or 50% deposit and the balance payable prior to shipment unless otherwise agreed in writing. The full amount of the delivery shall be invoiced including any carriage duties taxes and VAT, payable within 10 days of the invoice date.
- 9.9.2 The Company reserves the right to apply a charge for cancellation of any order for goods by the Buyer after acceptance of the order or the commencement of manufacture. This charge shall be the outstanding balance of goods already produced or in work + VAT at the time of cancellation.
- 9.9.3 Where the goods are imported, prices are quoted FOB from the country of origin. Any variations in currency exchange rate up to the point of departure from the country of origin shall be included.
- 9.9.4 Freight, Insurance, Customs Handling, Duty and all importation charges shall be quoted separately and invoiced against the shipment quantity/value, date and UK delivery address on a per shipment basis at the time of arrival.
- 9.9.5 Extended credit terms may be agreed such as Bankers Performance Bond, Letters of Credit, Escrow etc subject to established trading history.

**10 Insolvency**

- 10.1 This clause applies if:
- (a) the Buyer makes any voluntary arrangement with its creditors or become subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (other than for the purpose of amalgamation or reconstruction) or
  - (b) an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Buyer, or
  - (c) the Buyer ceases or threatens to cease, to carry on business, or
  - (d) the Company reasonable apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 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 Buyer, and if the goods have been delivered but not paid for the price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contract.

**11 Intellectual Property**

- 11.1 The Buyer shall have no rights to any intellectual property owned by or licensed to the Company and the Company will have no rights to any intellectual property owned by the Buyer. The Company shall have no liability to the Buyer in the event that the goods, or other items relating to their production (including without limitation, all tools, casts and models) or their production use or duplication, infringe any intellectual property rights of a third party.
- 11.2 All appearances, techniques, samples and other items relating to the production of the goods shall remain the Company's property, shall be treated as confidential and shall not be used, copied, reproduced or disclosed to any person without the Company's prior written consent.
- 11.3 If any claim is made against the Company that the goods or tools infringe or that their use, duplication, or resale infringes the patent, copyright, design, trade mark, or other industrial or intellectual property rights of any other person, the Buyer shall indemnify the Company against all losses, damage, costs and expenses awarded against or incurred by the Company in connection with the claim, or paid or agreed to be paid by the Company in settlement of the claim and the Buyer shall at its own cost give the Company all reasonable assistance for the purposes of any such proceedings or negotiations.

**12 Disclaimer**

- 12.1 The Buyer undertakes with the Company no indemnity and hold nameless the Company from and against liabilities, losses, damages, costs, charges and expenses (including without limitation legal fees and expenses on a full indemnity basis), actions, claims and demands incurred by or brought against by the Company and arising directly or indirectly out of the production or supply of the goods by the Company in compliance with the Buyer's designs or any breach by the Buyer.
- 12.2 The contract with the Buyer shall be subject to the laws of England and Wales to the jurisdiction of the Courts of which countries the Buyer hereby submits.

I hereby acknowledge receipt and acceptance of these Terms of Business

Name \_\_\_\_\_

Sig \_\_\_\_\_

Date \_\_\_\_\_

Please fax/email this sheet to 01782 817851/enquiries@pdcomponents.co.uk