

Standard Terms & Conditions of Sale Power Electronics and Controls Limited



1. General

All orders accepted and tenders made by Power Electronics and Controls Limited (the SELLER) are made and accepted upon the following terms and conditions. Any order given to the SELLER, or acceptance of the SELLER's tender, shall be deemed to constitute an agreement to be bound by such terms and conditions.

The terms and conditions herein contained shall govern all contracts entered into by the SELLER for the supply of goods and services and in the absence of express agreement to the contrary any condition, warranty or other term which the BUYER may seek to impose shall not apply to the SELLER in so far as it is contrary to or inconsistent with these terms and conditions. In particular, but without prejudice to the generality of the foregoing, the SELLER will not be bound by any terms which seek to exclude these terms and conditions or any of them.

The BUYER of any product or service supplied by the SELLER shall be deemed to have inspected and approved the goods on delivery, and to have read and approved these terms and conditions of sale.

2. Offers and Contracts

Quotations for the supply of goods and services issued by the SELLER are not offers capable of acceptance so as to create a binding contract. No contract shall come into existence by which the SELLER shall be bound before the BUYER has submitted an order in writing, by fax or electronic mail and the SELLER has thereafter accepted that order in writing, by fax or electronic mail. Such contract forms the firm and final specification of the buyer's requirement and supersedes any previous proposals, communications or oral representations.

3. Drawings and Specifications

All the information contained in any specification, drawing and internet download from our website, catalogue (or which accompanies or forms part of any quotation made by the SELLER) is subject to alteration at any time without prior notice and the SELLER will not be bound to comply therewith. The SELLER shall not be liable for any inaccuracies in any drawing, specifications or other information supplied to the BUYER and the SELLER shall not be liable for any result whatsoever arising from any inaccuracy howsoever caused.

4. Proprietary Information

Information contained in software, hardware, engineering and fabrication drawings, brochures, web pages and contract proposals are confidential and remain the sole and exclusive property of the seller. Title does not pass to the BUYER at any time whatsoever. Buyer agrees not to copy, reproduce, publish, display, make available or divulge in whole or in part, directly or indirectly, any of such information to third parties without the prior permission of the SELLER. Buyer undertakes to maintain the SELLER's rights to confidentiality by instructing and obtaining agreement from its employees, agents or consultants who have access to such information in whole or in part so that the buyer satisfies its obligations.

5. Software Licence

Software programs supplied for the operation of the product supplied by the SELLER remains the sole and exclusive property of the SELLER regardless of format or media in which the

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software programs are provided. The SELLER grants to the BUYER and BUYER hereby accepts a non-exclusive, non-transferable licence to use the software programs on products supplied by the SELLER. Furthermore, BUYER shall not permit any parent, subsidiary, affiliated entity, or third party to use the programs in any way without the prior written authorization by SELLER. The ownership of the software programs shall at all times remain the sole property of the SELLER. In the event that the BUYER makes an unauthorized use, duplication, or transfer of any software programs, SELLER may terminate all rights granted herein, and BUYER shall, upon SELLER's request, return or destroy all copies of programs in its possession or for which it has access to directly or indirectly. SELLER's rights to terminate the licence granted herein shall be in addition to other rights and remedies for unauthorized use, duplication, or transfer, including SELLER's right to seek damages, as provided by law.

6. BUYER's Purchase Orders

Any verbal, telephoned or electronic mail orders and any variations to orders must be confirmed in writing by the BUYER, otherwise the SELLER will not, unless it so thereafter agrees in writing, be bound to comply with same.

7. Errors and omissions

The SELLER will not be bound by any clerical or arithmetical errors occurring in any quotation, notice of acceptance, invoice or statement of account or document issued by it. The SELLER will rectify any error as soon as it comes to light and will notify the buyer accordingly. Such error will not alter the obligations of the BUYER in any way whatsoever.

8. Prices

The price for goods and services (hereinafter called the "purchase price") is denominated in Great Britain Pound (hereinafter called "GBP£") is unless otherwise specified net and ex-works Kettering England UK. The purchase price includes all items described in the offer for sale quotation and excludes, where applicable, freight, insurances, taxes, licence fees, customs, import and export duties and charges of any governmental body, however, denominated which prior to the completion of deliveries, shall be levied, imposed or increased by any governmental authority, on or measured by any of the goods or services remaining unshipped or on or measured by any of the raw materials used in the manufacture of the product or in the manufacture of the containers for the product or the processing, purchase, sale, holding for sale, distribution, dealing in, transportation, use or handling of any of the product.

BUYER agrees to pay any increases in the price for BUYER requested changes in the drawings, specifications, quantities, delivery schedules and shipping instructions.

The price in SELLER's quotation does not include the cost of welding trials, welding parameter development, welding procedure tests and operator training other than that specifically agreed to in writing by SELLER.

SELLER reserve the right to recover costs of developing, testing and installing software to modify SELLER's software programs to meet BUYER's requirements over and above that specifically stated in SELLER's quotation or offer for sale document.

9. Delivery

The period of time quoted by the SELLER for delivery of goods ordered is the current estimate calculated from the date when the SELLER accepts the BUYER's order, or when the

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SELLER has received all the information and payments necessary for it to carry out the order and to deliver the goods, whichever is later.

Delivery schedules are given in good faith and every effort will be made to keep to delivery dates given, but no liability can be accepted by the SELLER for any loss caused through failure to deliver, or delay. The SELLER does not accept any penalty clauses in this respect. The delivery period will be varied from that agreed to with BUYER for any BUYER changes in the drawings, specifications, quantities, delivery schedules and shipping instructions.

10. Terms of Payment and late payment interest charges.

Payment of any goods dispatched or services rendered by the SELLER shall be made at the net of discount invoice price without deduction of any nature whatsoever as per the payment terms shown in the quotation of offer of sale of the product and services, or a subsequent order acknowledgement signed by a duly authorized representative of PEC.

Goods for Export Market:

Payment of any goods dispatched or services rendered by the SELLER shall be made at the net of discount invoice price in GBP£ Sterling or a currency agreed to by SELLER at an exchange rate to GBP£ on a prevailing date or agreed exchange rate without deduction of any nature whatsoever as per payment terms put forth by SELLER in SELLER's quotation or offer document.

Unless otherwise agreed payment for all goods delivered shall be net cash GBP£ sterling or a currency agreed to by SELLER in exchange for documents of title.

BUYER is not allowed to withhold or set off payments against any counterclaim of the BUYER which are disputed by the SELLER.

The SELLER reserves the right to charge interest on all overdue invoices from the date of the invoice up to the date on which the Seller receives the funds in their bank account at the rate of 5% above the Bank of England lending rate ruling at the time of issuance of invoice.

11. Title Non-Payment

Goods shall remain the property of the SELLER until the whole contract price has been paid and accordingly the SELLER shall be entitled to recover the goods if payment has not been made by the due date. Should the goods become constituents of or become converted into other products whilst subject to the SELLER's equitable and beneficial ownership, the SELLER shall have an equitable and beneficial ownership in such other products as if they were solely and simply the goods previously supplied by the SELLER. After delivery the BUYER shall be responsible for and shall indemnify the SELLER against loss or damage to the goods from whatsoever cause occurring. The BUYER agrees to store such goods and products in such a way that they are readily identifiable as the property of the SELLER. In the circumstances defined in this condition, the SELLER shall be entitled immediately after giving notice of its intention to repossess, to enter upon the premises of the BUYER with such transport as may be necessary and repossess any goods sold. The SELLER reserves to itself the right to pursue all other remedies available by law notwithstanding the generality of the foregoing.

12. Property in Tools

The SELLER shall retain the property in all tools used in the manufacture of any of the SELLER's products unless such tools have been supplied at the sole cost of the BUYER in which case the property in such tools shall be vested in the BUYER, which shall agree to

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leave any such tools in the permanent possession of the SELLER which will have the exclusive right to use any such tools in any manufacturing process. The BUYER shall not permit any third party to use any tools the property of which is vested in it whatsoever, nor shall it disclose to any third party any measurements, dimensional or design details or any other information whatsoever in respect of any such tools at any time. In the event of it becoming necessary to replace any tools the property of which is vested in the BUYER this shall be undertaken by the SELLER, which shall have the right to charge the full cost of such replacement tools to the BUYER.

13. Free Issue Parts

Where parts or components are supplied to the SELLER as a free issue by or on behalf of the BUYER for incorporation by the SELLER by bonding or otherwise in parts to be manufactured by the SELLER, such free issue parts or components are supplied at the BUYER's risk. Whilst reasonable care will be taken to avoid damaging free issue parts in the SELLER's possession the SELLER cannot accept any liability for such damage nor accept any liability for any costs or damage attributable to defects in free issue components. Free issue parts supplied by the BUYER will not be inspected by the SELLER and are deemed to have been inspected and passed by the BUYER. The SELLER cannot be held responsible for delays in deliveries arising from delays in the provision of free issue parts or delays arising out of the necessity for replacing or rectifying incorrect or defective free issue parts.

14. Substitutions

(a) Should any materials or parts specified or required for completion of a contract hereunder be unavailable for the timely satisfaction of the order, a substitute, deemed by the SELLER to be suitable for the intended purpose, as understood by the SELLER, will be supplied if available and shall be accepted by the BUYER in full satisfaction and performance of the SELLER's obligation in that particular.

(b) In the event that the SELLER is unable to obtain a substitute which the SELLER deems suitable for unavailable materials or parts, the SELLER's obligation to complete performance shall, upon notification posted to the BUYER, be suspended until such times as the materials previously unavailable for substitutes therefore as provided for above, become available, and any necessary adjustment to the price shall be made by the SELLER.

15. Sub-Contracting

The SELLER shall be entitled to sub-contract the whole or part of any work at its absolute discretion, and if it does so, shall be deemed to have carried out its obligations under the contract.

16. Industrial Property

The SELLER does not warrant that the supply or use of the goods in the United Kingdom or elsewhere is not an infringement of the patent, trade mark, registered design or other industrial rights of third parties.

17. Fitness for purpose

The SELLER takes every care with regard to the quality and standard of manufacture of its goods, but as they are used for a multiplicity of purposes and the SELLER has no control over the method of their application or use, the SELLER will not be bound by any conditions

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or warranties express of implied or otherwise as to the fitness of its goods for any particular purpose

The SELLER provides no guarantee for the metallurgical, mechanical or other properties of any welds produced by the product or services supplied by BUYER.

Any technical co-operation between the SELLER and the customer is given for the customer's assistance and shall not affect these conditions.

18. Storage

The SELLER reserves the right to put the goods or any portion thereof into storage at the BUYER's risk and expense in the following cases, or any other comparable circumstances:

- (i) where the goods are about to be delivered and the BUYER notifies the SELLER that the BUYER is or will be unable to receive or provide suitable space for the goods, or for any other reason will be unable to accept delivery when tendered;
- (ii) where the SELLER is ready to delivery the goods but needs delivery instructions and such instructions have not been provided by the BUYER;
- (iii) in an ex-works contract where the BUYER fails to collect the goods when ready

19. Goods in Transit Insurance

In all instances whatsoever, the BUYER shall be responsible for insuring the goods on an all risk basis and or to bear the cost of such insurance if this is arranged by the SELLER at the BUYER's request. Where goods are insured by the SELLER voluntarily or at the BUYER's request, a charge will be made on the invoice, but the SELLER is under no liability to take proceedings for the recovery of the loss or damage and is to be liable only for the amount received by the SELLER under such insurance, less expenses.

20. Damage or Loss in Transit

The risk of loss or damage to the goods howsoever caused shall pass to the BUYER on delivery of the goods to the BUYER, or to a carrier for consignment to the BUYER, or on the expiry of the date notified to the BUYER that the goods are ready for delivery, whenever shall be the earliest.

21. Claims

All claims for loss or damage to goods in transit must be submitted in writing both to the SELLER and to the Carrier as follows:

- (i) in the case of non-delivery of the whole of any consignment or of any separate package forming part of a consignment within seven days of receipt by the BUYER of the invoice or advice note (whichever is the earlier) in the case of deliveries to be made in the United Kingdom and within twenty-one days of receipt by the BUYER of the invoice or advice note (whichever is the earlier) in the case of deliveries to be made outside the United Kingdom; and
- (ii) in the case of damage to or partial loss of the goods, within three days of delivery in the case of United Kingdom deliveries and with seven days of delivery in the case of deliveries outside the United Kingdom.

The absence of any such claim shall be conclusive evidence that the goods have been delivered in accordance with the contract.

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In the case of any claim made by the BUYER for defective goods there shall be a consultation between the SELLER and BUYER to attempt to reach an agreement as to liabilities. In the case where no agreement can be reached the SELLER will be limited to the sum of £1,000.00 for any reimbursable expense.

22. Cancellation

By Seller: If the BUYER fails to make punctual payment or commits any breach of these terms and conditions or being a body corporate has a receiver appointed or passes a resolution for winding up (other than for the purposes of amalgamation or reconstruction) or a Court makes an order to that effect or being an individual has a receiving order made against him or enters into any composition or arrangement with his creditors the SELLER may suspend any outstanding deliveries or cancel this contract so far as it remains unperformed at its option and without prejudice to the SELLER's other rights and remedies including without limitation its rights to claim for the price of the goods and services ordered from the SELLER's suppliers for the contract, goods in the process of manufacture and goods and services already delivered or ready to be delivered at the date of cancellation and for any loss or injury occasioned thereby.

By Buyer: Unless otherwise agreed, the Buyer may cancel the order subject to written notice to the Seller no later than 30 days before the scheduled delivery date. On receipt of written notice of cancellation, the Seller will terminate all work as promptly as possible. Buyer will be liable to pay the Seller as liquidated damages a cancellation charge. In respect of completed items, or non-standard items that have been manufactured or purchased specific to BUYER's requirement, the charge will be the Seller's recommended retail price. In respect of items in the process of manufacture, the charge will be calculated by the seller in accordance with standard accounting standards, to include an allowance for overheads, storage, transportation costs for disposal less a credit allowed to the Buyer for the scrap metal value of the goods. In respect of incomplete items on order from the Seller's subcontractors at the time of notice of cancellation, the charge will be equivalent to the cancellation charge imposed by such subcontractor. The cancellation charge will include any other charges whatsoever relating to the order that the Seller has become liable for, by virtue of the acceptance of the order.

In respect of cancellation by Seller or Buyer, credit will be allowed for payments made by Buyer up to the time of cancellation in accordance with the payment schedule such credit to be given against the cancellation charge arising.

23. Indemnity

The BUYER shall indemnify and keep the SELLER indemnified against all costs, claims, damage or expense (whether in relation to persons or property) caused by or resulting from any breach or non-performance of the contract negligence on the part of the BUYER its servants or agents.

24. Non-Assignability

The contract is between the SELLER and the BUYER as principals and is not assignable without the consent in writing of the SELLER.

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25. Warranty of products

a) for supply within the United Kingdom

Subject to the conditions hereinafter contained the SELLER guarantees the product's materials, labour and all SELLER's associated costs for the period of twelve months or, less for certain items described elsewhere, from the date of delivery or, collection, against any defect attributable to faulty materials or workmanship.

b) for supply outside the United Kingdom

i) Subject to the conditions hereinafter contained the SELLER guarantees the product's materials and labour only for the period of twelve months or, less for certain items described elsewhere, from the date of delivery or, collection, against any defect attributable to faulty materials or workmanship.

ii) In the event that a site visit is required to rectify the defect and subject to the conditions hereinafter contained the SELLER will bear all costs for travel, meals, accommodation and other related items to provide its warranty obligations for a period of 3 months from the date of delivery or, collection. Thereafter, BUYER and SELLER agree to share equally these costs for the remainder of the warranty period.

c) Warranty conditions

SELLER warranty provision is valid only if:

- i) BUYER operates the product as per the operating procedures supplied with the product
- ii) BUYER carries out and records periodic maintenance checks issued by the SUPPLIER
- iii) Annual calibrations, inspections and servicing is done by the SELLER for which the SELLER will make a charge to the BUYER for labour, materials and all expenditure incurred in carrying out the visit.

Warranty period is based on the use of the product for no more than eight hours per day being the allowance for normal wear of components. Warranty is reduced thereon for abnormal usage beyond 8 hours per day on a pro rata basis

Warranty on welding torches and water coolers are six months from the date of delivery providing that the required consumables and attachments are supplied by SELLER or are SELLER approved third party parts. No warranty is provided if these conditions are not strictly adhered to.

Should any defect as aforesaid develop within the said period the SELLER will repair or (at its option) replace the defective product or the defective part at the SELLER's factory without charge provided that the product has not been subjected to abnormal use, or to use under abnormal conditions, or beyond its capacity as rated, or modified in any way from original form, or attached to third party fixtures, or not operated as per recommendations by the SELLER or, operated beyond its rated duty cycle or time.

d) Warranty corrective procedure

Any assumed defects in the product must be reported to SELLER in writing describing the symptoms, nature, location, operating conditions of the defect. BUYER shall quote the serial number if any of the product together with the date of purchase.

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The BUYER shall at its own expense return the defective product or part to the SELLER's factory and shall meet all other incidental expenses however incurred and the BUYER must pack the product adequately and delivery it at carriers risk rates.

The decision of the SELLER is final as to whether or not a defect is due to faulty workmanship or material.

If in the opinion of the SELLER the product is found to be satisfactory in operation or defective as a result of accident, neglect, alteration, misuse or wear and tear, the SELLER may at its discretion make a charge for examination and the cost of return carriage shall be borne by the BUYER. Where appropriate the SELLER will submit to the BUYER a quotation for the replacement of the product before effecting such a replacement.

The above guarantee shall not in any case extend to any products not of SELLER's manufacture but the SELLER will use its best endeavours to pass on to the BUYER the benefit (with corresponding liabilities) of any guarantee received by the SELLER from the supplier of any such goods, but not so as to impose upon the SELLER a greater liability than would be imposed by its own guarantee herein contained and provided that the SELLER does not incur any legal expense in connection therewith.

The SELLER shall not be liable for any costs of dis-assembling and re-assembling any equipment into which any of the SELLER's products may be fitted, and any such costs, if incurred, shall be paid by the BUYER.

The SELLER shall not be liable for any damage, loss, injury or expense of any sort or kind caused directly or indirectly to any person or property by any goods sold or delivered by the SELLER or arising from the use thereof and liability whether at common law or otherwise and whether arising from any conditions, statement or warranty expressed or implied is excluded.

Should the defective product or defective part have been improved in design through development since the date of delivery, the SELLER may, at its option, supply the new product or part.

e) Warranty Exclusions

SELLER expressly excludes warranty on the following:

1) All moving parts on wire-feed systems, welding torch heads, contact tips, liners, nozzles, gas lenses, hoses, hose fittings, welding cables, welding cable connections, operator pendants, pendant cable harnesses, remote controls, keypads, tracker balls, mouse, water cooler pumps, water seals, electrical and mechanical filters, replaceable dust hoods, greases, oils, coolant fluids.

ii) All parts supplied with the product but which are used on other products not of SELLER's manufacture, supply or recommendation.

iii) Software related defects are expressly excluded from warranty as these are third party products capable of use in diverse and unspecified conditions by BUYER which cannot be anticipated or tested for conformity by SELLER.

SELLER may, at its option, attempt to rectify software defects by sending by mail or electronic mail replacement software programs that rectify the defect. Subjective or speculative interpretation of the fitness of purpose of the software supplied by SELLER will not be accepted as a defect of the software program.

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26. Damages and Product Liability

SELLER's liability for damages to property and persons resulting from handling, erection, installation and use of the product including all rights of recourse by BUYER and third parties are excluded unless the BUYER can prove that the SELLER was grossly negligent in its performance of the contract.

BUYER is required to follow all instructions for handling, erection, installation and operation of the product provided by the SELLER and where such information is not available or cannot be decided upon by BUYER, it should consult SELLER immediately and before performing any actions on the product.

BUYER agrees to use skilled and suitably trained operators to perform all operations on the product.

The maximum extent of SELLER's liability shall not exceed the value of the purchase price of the product.

The maximum extent of SELLER's liability for products parts and products sourced from third parties is limited to that of our own rightful claim against the third party and limited to the value of the purchase price of the third party part or product

27. Insurances

SELLER's maintains Product Liability Insurance to the value of GBP£2,000,000 and comprehensive Public Liability Insurance to the value of GBP£2,000,000.00 for damage or injury to its workers and third parties working with SELLER within the area of product erection and installation

28. Packing

Unless otherwise specified in any order or tender of the SELLER all packing cases, skips, drums and other packing materials will be charged for and are not returnable to the SELLER.

29. Concurrent Remedies

No right or remedy conferred upon or reserved to the SELLER shall exclude any other right or remedy herein or provided or permitted by law or equity at any time and all such rights and remedies shall be cumulative and may be enforced concurrently therewith or from time to time.

30. Arbitration

Any dispute arising herefrom including disputes as to the existence or validity of a contract between the parties (other than disputes to be referred to an expert) shall be referred to an arbitrator to be appointed by the parties jointly, or in the event of their failing to agree, to an arbitrator appointed by the President for the time being of the Law Society of England and Wales on the application of either party for such appointment and in such case the following provisions shall apply to such arbitration;

(i) the arbitration shall take place in London, England;

(ii) the arbitrator shall apply the law of England and Wales;

(iii) the procedure shall be that provided by the Arbitration Act 1996 or any subsequent amendments thereof and such further procedure as shall be settled by the arbitrator on the application of either party to the arbitrator.

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31. Legal Construction

These conditions and every contract in which they are incorporated shall be governed by and construed according to the laws of England and Wales and subject to clause 30 the BUYER agrees to submit to the jurisdiction of the English Courts.

32. Product Safety

BUYER is required to follow all Occupational hazard and Health and Safety guidelines currently in force with regard to operator exposure to arc welding radiation, heat and light emissions.

SELLER has no liability for death, injury or other remedies for failure to observe the above guidelines

33. Force Majeure

The SELLER will not be responsible or accountable for any delay in delivery occasioned by any cause outside its control, but shall be allowed a corresponding extension of time in respect of such delay. In particular, but without prejudice to the generality of the foregoing, the SELLER will not be responsible or accountable for any delay occasioned by strike, labour disputes, lock-out, war, fog, fire, flood, ice, accident (wherever any of the said causes shall occur), acts of God, acts of third parties, acts of government or governmental departments, natural disasters, defective materials supplied by others, or failure on the part of any supplier to make delivery to the SELLER including but not limited to factors affecting the supply, manufacture or delivery of raw materials or components required for the manufacture of the items comprised in the order.

Should the SELLER be prevented by reason of any of the said causes from supplying in full any goods especially manufactured, the BUYER shall take such goods as the SELLER is able to deliver and shall pay for the same pro rata at the agreed prices. The SELLER shall have the right to deliver any portion of the goods sold or agreed to be sold separately and to invoice the BUYER and to receive payment thereof on the same terms and conditions as are herein set forth for the whole Contract.

END OF DOCUMENT

AREA BELOW IS VOID