

AGS ELECTRONICS LIMITED  
TERMS AND CONDITIONS OF SUPPLY

The customer's attention is drawn in particular to the provisions of clause 11.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:  
AGS: AGS Electronics Limited (registered in Scotland with company number SC381257).  
Background Intellectual Property: any Intellectual Property, other than Foreground Intellectual Property, relating to the Technology.  
Conditions: the terms and conditions set out in this document as varied in accordance with clause 15.4.  
Confidential Information: has the meaning given in clause 12.2.  
Contract: the contract between AGS and the Customer for the sale and purchase of the Goods in accordance with these Conditions.  
Customer: the person or firm who purchases the Goods from AGS.  
Delivery Location: the address, as determined on the quotation, unless the Order Acknowledgement or other document issued by AGS confirms a different address for Delivery.  
Delivery: actual delivery, collection or deemed Delivery in accordance with clause 5.1 or clause 5.4, as the case may be.  
Force Majeure Event: has the meaning given in clause 14.  
Foreground Intellectual Property: any Intellectual Property that is created by or on behalf of, either party in respect of the Technology.  
Goods: the goods (or any part of them) set out in the Order.  
Group: in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries.  
Holding company and subsidiary: means a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.  
Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill and/or in passing off, rights in competition rights, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) or any other intellectual property rights, in each case whether registered or unregistered and including all applications for patents or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and Intellectual Property Right means any one of the Intellectual Property Rights.  
Intellectual Property: any existing or future intellectual property subject to or capable of being subject to any Intellectual Property Right of any type.  
Month: a calendar month.  
Monthly Forecast Report: a document setting out the Customer's forecasted demand for the Goods for a period of time.  
Public Holiday: any bank holiday and/or public holiday in Scotland.  
Order: a verbal or written order for the Goods submitted by the Customer in accordance with clause 2.2.  
Order Acknowledgement: any written acknowledgment of an Order which may be issued in accordance with clause 2.3.  
Specification: any specification for the Goods, including any related plans and drawings, that is supplied by the Customer to AGS.  
Technology: all inventions, designs, information, know-how, specifications, formulae, data, processes, methods, techniques and other technology used, created or developed by AGS or its sub-contractors in the development, manufacture and production of the Goods pursuant to the Contract, including any improvements in the same.  
VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

Working Day: any day except Saturday, Sunday, or any day falling on a Public Holiday.  
Working Hours: the hours worked on a Working Day between 8am – 4.45pm Monday to Thursday (inclusive) and 8am – 12.30pm Friday.  
Year: a calendar year.

2.1 Construction. In these Conditions, the following rules apply:  
(a) A person includes a natural person and any corporate or unincorporated body (whether or not having separate legal personality).  
(b) Unless the context otherwise requires, words in the singular shall include the plural and vice versa.  
(c) In the context otherwise requires, a reference to one gender shall include a reference to the other genders.  
(d) A reference to a party includes its personal representatives, successors or permitted assignees.  
(e) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or provision as amended or re-enacted.  
(f) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative only and shall not limit the sense of the words preceding those terms.  
(g) A reference to writing or written includes faxes and e-mail.  
(h) Any obligation in these Conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.

2.2 BASIS OF CONTRACT  
2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade custom, practice or any previous or current course of dealing.  
2.4 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.  
2.5 The Order shall only be deemed to be accepted when AGS issues an Order Acknowledgement to the Customer, at which point the Contract shall come into existence and AGS shall supply and the Customer shall purchase the quantities and type of Goods confirmed in the Order Acknowledgement.  
2.6 Contract agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of AGS which is not set out in the Contract.  
2.7 Any samples, drawings, descriptive matter, or advertising provided by AGS and any descriptions or illustrations contained in AGS's catalogues or brochures or websites are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force unless repeated in full or referred to by reference to this clause in any Order Acknowledgement.  
2.8 Quotation shall form the basis of AGS shall not constitute an offer. A quotation shall only be valid for a period of 30 Working Days from its date of issue.

3. GOODS  
3.1 The Goods are described in the Specification.  
3.2 The Customer shall indemnify AGS against all liabilities, costs, expenses, damages and losses (including any indirect, indirect or consequential loss or expense, loss of profit, loss of interest, penalties and legal and other professional costs and expenses) suffered or incurred by AGS in connection with any claim made against AGS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with AGS's supply of the Specification. This clause 3.2 shall survive termination of the Contract.  
3.3 AGS reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. FORECASTS  
4.1 Any Monthly Forecast Report or other forecasts shall be given in writing. The Customer shall act in good faith when forecasting any requirements of the Goods.  
4.2 For the avoidance of doubt, if the Customer supplies any forecast of Goods likely to be required to AGS, AGS shall not be bound to supply any Goods to the Customer unless and until both:  
(a) an Order for the forecasted demand is placed by the Customer in writing; and  
(b) an Order Acknowledgement is issued by AGS.

5. DELIVERY  
5.1 AGS or its carriers (whichever is actually delivering the Goods), shall make the Goods available for Delivery by the Customer at the Delivery Location at any time after AGS notifies the Customer that the Goods are ready, subject to clause 5.4(a). Delivery will take place on the Goods' arrival at the Delivery Location.  
5.2 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. AGS shall not be liable for any delay in Delivery of the Goods that is caused by:  
(a) a Force Majeure Event; or  
(b) the Customer's failure to provide AGS with adequate instructions; or  
(c) the Customer's failure to perform any of its Customer obligations detailed at clause 6; or  
(d) AGS exercising its rights to suspend deliveries under clause 9.5; or  
(e) any other instructions that are relevant to the supply of the Goods.

5.3 If AGS fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods and quality of the replacement market available, less the price of the Goods. AGS shall have no liability for any failure to Deliver the Goods to the extent that such failure is caused by:  
(a) a Force Majeure Event; or  
(b) the Customer's failure to provide AGS with adequate instructions; or  
(c) the Customer's failure to perform any of its Customer obligations detailed at clause 6; or  
(d) AGS exercising its rights to suspend deliveries under clause 9.5; or  
(e) any other instructions that are relevant to the supply of the Goods.  
5.4 If the Customer fails to accept Delivery of the Goods within three Working Days of AGS notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or AGS's failure to comply with its obligations under the Contract:  
(a) Delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Working Day after the day on which AGS notified the Customer that the Goods were ready; and  
(b) AGS may store the Goods until actual delivery or collection (as the case may be) takes place, and charge the Customer for all uncollected or uncollected Goods under clause 9.5; or  
(c) The Customer shall not be entitled to reject the Goods if AGS delivered up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.  
5.5 AGS may make the Goods available for Delivery by instalments, each of which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in making a particular instalment available for Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.  
5.7 If, for whatever reason, AGS suggests the Customer obtain alternative replacement goods of similar description and quality in the cheapest market available to the Goods – for the avoidance of doubt:  
(a) no warranty is provided; and  
(b) no liability is accepted;  
by AGS in relation to the replacement goods or the recommendation of them.

6. CUSTOMER OBLIGATIONS

6.1 The Customer shall:  
(a) co-operate with AGS in all matters relating to the Contract;  
(b) if the Delivery Location is the Customer's premises or a location other than AGS's premises, provide in a timely manner such access to the relevant premises as is requested by AGS, or any of its carriers, assignees, subcontractors or agents;  
(c) be responsible (at its own cost) for preparing the relevant premises for the supply of the Goods.  
6.2 The Customer shall ensure that the terms of the Order and any information it provides in the Specification are complete and accurate.  
6.3 On Delivery, the Customer shall:  
(a) unpack and inspect the Goods and notify AGS in writing of any shortage in quantity, damage or defect within 3 months of such Delivery; and,  
(b) failing any such notification, the Customer shall be deemed to have accepted the Goods for all purposes.  
In the case of (i) latent defects, or (ii) actual collection taking place subsequent to a deemed Delivery under clause 5.4(a), the period of 3 months for notification shall be deemed to have commenced when the latent defect was discovered, as the case may be, or when there has been a deemed Delivery, within 3 months after the date of the deemed Delivery.  
6.4 If the Customer has made known to AGS in a written Order (and that Order has been accepted by an AGS Order Acknowledgement) that the Goods are to be used in conjunction with other goods for a particular purpose the Customer shall:  
(a) carry out tests on the Goods in conjunction with those other goods for the particular purpose within 3 months of Delivery and notify AGS in writing of any shortage, damage or defect within 3 months of such Delivery; and,  
(b) failing any such notification, the Customer shall be deemed to have accepted the Goods for all purposes.  
6.5 The Customer will co-operate in assessing and minimising any health and safety hazards to a reasonable level and will notify AGS of all such hazards in relation to the Contract prior to the Delivery of the Goods.

6.6 If AGS's performance of any of its relevant obligations under the Contract is prevented or delayed by any act by the Customer or by any act or omission by the Customer to perform any of its contractual obligations ("Customer default"),  
(a) AGS shall, without limiting its other rights or remedies, have the right to suspend performance of its obligations under the Contract until the Customer remedies the Customer Default;  
(b) AGS shall not be liable for any costs, expenses or losses incurred by the Customer arising directly or indirectly from any Customer Default; and  
(c) the Customer shall reimburse AGS on written demand for any costs, expenses or losses incurred by AGS arising directly or indirectly from any Customer Default.  
7. QUALITY  
7.1 AGS warrants that on Delivery, and for a period of 12 months (subject to clause 7.6) from the date of Delivery (warranty period), the Goods shall:  
(a) conform in all material respects with the Specification;  
(b) be free from material defects in design, material and workmanship; and  
(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).  
7.2 Subject to clause 7.3, if:  
(a) the Customer gives notice in writing to AGS during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1; and  
(b) AGS is given a reasonable opportunity of examining such Goods; and  
(c) the Customer (if asked to do so by AGS) returns such Goods to AGS's place of business  
AGS shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.  
7.3 AGS shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:  
(a) the Customer makes any further use of such Goods after giving notice in accordance with clause 7.2;  
(b) the Customer makes any further use of such Goods after discovering that some or all of the Goods do not comply with the warranty set out in clause 7.1;  
(c) the Customer fails to perform any of its obligations set out in clause 6;  
(d) the defect arises because the Customer failed to follow AGS's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the use and maintenance of the Goods;  
(e) the defect arises as a result of AGS following any drawing, design or Specification supplied by the Customer;  
(f) the Customer alters or repairs such Goods without the written consent of AGS;  
(g) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions;  
(h) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; and  
(i) the Goods are used for an unusual purpose which (A) was not stated in the Order and/or Specification and accepted by the Order Acknowledgement; and (B) was not therefore within the contemplation of the parties to the Contract at the time it was made.

7.4 Except as provided in this clause 7, AGS shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.  
7.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded in relation to the Goods.  
7.6 If any further warranty period is available from AGS's suppliers in relation to the Goods or any component of same and the Customer makes a request for such a warranty period to AGS in writing before Delivery:  
(a) AGS will endeavour to pass on the benefit of or to extend that warranty (in so far as it is capable of being passed on or extended) to the Customer, provided that:  
(i) AGS incurs any costs and/or expenses in doing so (or in attempting to do so) those costs and/or expenses shall be payable by the Customer to AGS, in advance or on demand (as required by AGS).  
7.7 These Conditions shall apply to any repaired or replacement Goods supplied by AGS.

8. TITLE AND RISK

8.1 The risk in the Goods shall pass to the Customer on Delivery.  
8.2 Title to the Goods shall not pass to the Customer until AGS has received payment in full (in cash or cleared funds) for:  
(a) the Goods; and  
(b) any other goods or services that AGS has supplied to the Customer, whether under the Contract or any other contract.  
8.3 Until title to the Goods has passed to the Customer, the Customer shall:  
(a) hold the Goods on a fiduciary basis as AGS's agent;  
(b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as AGS's property;  
(c) not remove, defect or obscure any identifying mark or packaging on or relating to the Goods;  
(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;  
(e) notify AGS immediately if it becomes subject to any of the events listed in clause 10.2; and  
(f) give AGS such access and information relating to the Goods as AGS may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.  
8.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.2, or AGS reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, unless AGS has been notified in writing that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy AGS may have, AGS may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored to the Customer's order in order to recover them.

9. TERMS OF PAYMENT

9.1 Payment, including the payment of any deposit to account of the price of the Goods, will be due as stated in the quotation and/or the Order Acknowledgement and/or invoice, as the case may be.  
9.2 Unless otherwise stated, all payments shall be made by the date on which the Goods are to be delivered and will not change the due date for payment of any part of the price.  
9.3 The Customer shall pay invoices in full and in cleared funds on the date detailed on the invoice and/or as stipulated in writing by AGS to the Customer. Payment shall be made to the bank account nominated in writing by AGS. Time of payment is of the essence of this contract.  
9.4 Any discounts or other reductions in the price granted by AGS are subject to the Customer's compliance with its whole obligations under the Contract and may be withdrawn by notice to the Customer if the Customer breaches any obligation.  
9.5 Without limiting its rights in any way, AGS reserves the right to suspend deliveries and demand immediate payment for all Goods which have been ordered if any payment under any contract between the Customer, or any person associated with the Customer, and AGS becomes overdue.  
9.6 All payments payable to AGS under these Conditions shall become due immediately on the termination of the Contract.  
9.7 AGS may, by giving notice to the Customer at any time up to 14 days before Delivery, increase the price of the Goods but only to the extent such increase is required to reflect any increase in the cost of the Goods that is due to:  
(a) any factor beyond AGS's control (including foreign exchange rate fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);  
(b) any request by the Customer to change the Delivery date(s), quantities or types of Goods ordered, or the Specification.  
(c) any request by the Customer for AGS to work out with Working Days and/or Working Hours; and/or  
(d) any delay caused by any instructions of the Customer or failure of the Customer to give AGS adequate or accurate information or instructions.  
9.8 The price of the Goods is inclusive of the costs and charges of packaging of the Goods.  
9.9 The price of the Goods is exclusive of any transport costs and charges which shall be invoiced to the Customer.  
9.10 The price of the Goods is exclusive of any VAT. The Customer shall, on receipt of a valid VAT invoice from AGS, pay to AGS such additional amounts in respect of VAT as are chargeable from time to time on the supply of the Goods.  
9.11 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against AGS in order to justify withholding payment of any such amount in whole or in part. AGS may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by AGS to the Customer.

10. CUSTOMER'S INSOLVENCY OR INCAPACITY

10.1 If the Customer becomes subject to any of the events listed in clause 10.2, or AGS reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to AGS, AGS may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and AGS without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due to the Customer.  
10.2 For the purposes of clause 10.1, the relevant events are:  
(a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits liability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its liabilities as they become due or insolvent within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;  
(b) the Customer commences negotiations with all or any class of its creditors with a view to rescinding any of its debts, or makes its proposals or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;  
(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;  
(d) (being an individual) the Customer is the subject of a bankruptcy petition or order;  
(e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;  
(f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;  
(g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;  
(h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;  
(i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2(a) to clause 10.2(h) (inclusive);  
(j) the Customer suspends, threatens to suspend, ceases or extends to cease to carry on or substantially the whole of its business;  
(k) the Customer's financial position deteriorates to such an extent that in AGS's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or  
(l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.  
10.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly by implication survive termination of the Contract shall continue in full force and effect.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude AGS's liability for:  
(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);  
(b) fraud or fraudulent misrepresentation;  
(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;  
(d) defective products under the Consumer Protection Act 1987; or  
(e) any other matter in respect of which it would be unlawful for AGS to exclude or restrict liability.  
11.2 Subject to clause 11.1, AGS shall not in any circumstances be liable whether in contract, delict (including for negligence and/or arising from its statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:  
(a) any loss (whether direct or indirect) of:  
(i) profits;  
(ii) business opportunities;  
(iii) revenue;  
(iv) business;  
(v) turnover; or  
(vi) reputation; or  
(b) any loss or corruption (whether direct or indirect) of:  
(i) data; or  
(ii) information;  
(c) loss (whether direct or indirect):  
(i) of anticipated savings; or  
(ii) incurred in relation to wasted expenditure (including management time); or  
(d) any loss or liability (whether direct or indirect) under or in relation to any other contract to which the Customer is a party.  
11.3 Clause 11.2 shall prevent claims, which fall within the limits stated in clause 11.4, for:  
(a) direct financial loss that is not excluded by clause 11.2(a) or clause 11.2(b); or  
(b) physical damage to corporate property.  
11.4 Subject to clause 11.1, AGS's total aggregate liability in contract, delict (including negligence and breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract or any other related contract shall be limited to the highest of:  
(a) £20,000;  
(b) the total price paid by the Customer under the Contract in the 12 months preceding the first notification of any claim by the Customer; or  
(c) the amount, if any, paid to AGS by its insurers in respect of all claims by the Customer.  
11.5 Subject to clause 11.1, no claim by the Customer under these Conditions will be competent unless the Customer gives notice specifying the nature of the claim in reasonable detail within one year after the Goods have been supplied to the Customer.  
11.6 Customer Indemnity: AGS is a small company and, depending on the Customer's intended use for the Goods, may be unlikely to have, or be able to obtain on reasonably economic terms, adequate insurance to cover all potential losses or liabilities if claims are made in respect of any alleged defect or inadequacy in the Goods supplied to the Customer. The Customer therefore agrees to indemnify and hold AGS harmless in respect of any claims of any nature, whether made by or against the Customer or by or against AGS by any third parties, to the extent the claims relate to any use of any such alleged defect or inadequacy and exceed the total amount, if any, paid to AGS by its insurers in respect of all such claims. If the Goods are to be used as components of another product, particularly any high value, high risk, high performance or experimental product, AGS will co-operate with any reasonable requests from the Customer in relation to the Customer obtaining its own insurance for the Goods to the extent any claims might exceed the total amount, if any, paid to AGS by its insurers in respect of all such claims.

(i) profits;  
(ii) business opportunities;  
(iii) revenue;  
(iv) business;  
(v) turnover; or  
(vi) reputation; or  
(vii) goodwill;  
(b) any loss or corruption (whether direct or indirect) of:  
(i) data; or  
(ii) information;  
(c) loss (whether direct or indirect):  
(i) of anticipated savings; or  
(ii) incurred in relation to wasted expenditure (including management time); or  
(d) any loss or liability (whether direct or indirect) under or in relation to any other contract to which the Customer is a party.  
11.3 Clause 11.2 shall prevent claims, which fall within the limits stated in clause 11.4, for:  
(a) direct financial loss that is not excluded by clause 11.2(a) or clause 11.2(b); or  
(b) physical damage to corporate property.  
11.4 Subject to clause 11.1, AGS's total aggregate liability in contract, delict (including negligence and breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract or any other related contract shall be limited to the highest of:  
(a) £20,000;  
(b) the total price paid by the Customer under the Contract in the 12 months preceding the first notification of any claim by the Customer; or  
(c) the amount, if any, paid to AGS by its insurers in respect of all claims by the Customer.  
11.5 Subject to clause 11.1, no claim by the Customer under these Conditions will be competent unless the Customer gives notice specifying the nature of the claim in reasonable detail within one year after the Goods have been supplied to the Customer.  
11.6 Customer Indemnity: AGS is a small company and, depending on the Customer's intended use for the Goods, may be unlikely to have, or be able to obtain on reasonably economic terms, adequate insurance to cover all potential losses or liabilities if claims are made in respect of any alleged defect or inadequacy in the Goods supplied to the Customer. The Customer therefore agrees to indemnify and hold AGS harmless in respect of any claims of any nature, whether made by or against the Customer or by or against AGS by any third parties, to the extent the claims relate to any use of any such alleged defect or inadequacy and exceed the total amount, if any, paid to AGS by its insurers in respect of all such claims. If the Goods are to be used as components of another product, particularly any high value, high risk, high performance or experimental product, AGS will co-operate with any reasonable requests from the Customer in relation to the Customer obtaining its own insurance for the Goods to the extent any claims might exceed the total amount, if any, paid to AGS by its insurers in respect of all such claims.

12. CONFIDENTIALITY

12.1 Each party agrees that it shall not at any time disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including but not limited to information relating to a party's Intellectual Property including its operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customer lists ("Confidential Information"), except with the prior written consent of the other party or when such disclosure is permitted by clause 12.2.  
12.2 Each party may disclose the other party's Confidential Information:  
(a) to its employees, officers, agents, consultants or sub-contractors (Representatives) who need to know such information for the purpose of carrying out the party's obligations under these Conditions, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 12 as though they were a party to these Conditions. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and  
(b) as may be required by law, court order or any governmental or regulatory authority.  
12.3 Each party agrees that it shall not at any time disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including but not limited to information relating to a party's Intellectual Property including its operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customer lists ("Confidential Information"), except with the prior written consent of the other party or when such disclosure is permitted by clause 12.2.  
12.4 Each party shall immediately give written notice to the other party of any actual, threatened or suspected Intellectual Property arising from the work of its sub-contractor shall be assigned to it absolutely.  
12.5 Each party may use and exploit any Foreground Intellectual Property it owns (either solely or jointly) and each party irrevocably consents to the other party's use and exploitation of any jointly owned Foreground Intellectual Property arising from the work of its sub-contractor, provided that the customer may not use or exploit such Foreground Intellectual Property in competition with AGS or its products and in the material sectors served by Prototypes Handbuilt, Printed Circuit Board Layout, Cable Harness Wiring, Box Build, PCB Assembly and/or Surface Mount.

13. FORCE MAJEURE

13.1 AGS or any person acting on its behalf shall not have any liability or responsibility for failure to fulfil any obligation under these Conditions so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, delayed or otherwise affected as a consequence of a Force Majeure Event.  
13.2 Should AGS wish to claim the benefit of this provision it shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:  
(a) notify the Customer of the nature and extent of such Force Majeure Event; and  
(b) use all reasonable endeavours to remove any such causes and resume performance under these Conditions as soon as possible.  
13.3 For the purposes of this clause 13.4, a Force Majeure Event means:  
(a) any labour disputes, strikes, lock-outs or other industrial disputes (whether involving that party's own workforce or a third party);  
(b) default of suppliers or subcontractors;  
(c) any event beyond the control of a party (or any person acting on its behalf) and includes, without limitation:  
(i) interruption or failure of utility services, including but not limited to electric power, gas or water;  
(ii) failure of any transport network;  
(iii) acts of God, including but not limited to fire, flood, earthquake, windstorm, loss at sea, epidemics, or other natural disaster;  
(iv) war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict;  
(v) compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);  
(vi) malicious damage;  
(vii) breakdown of plant or machinery;  
(viii) nuclear, chemical or biological contamination or sonic boom;  
(ix) fires, explosions or accidental damage;  
(x) collapse of building structures;  
14.14 If the Force Majeure Event prevails for a continuous period of more than 12 months, either party may terminate the Contract by giving 14 days notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall not be prejudicial to the rights of the parties in respect of any breach of these Conditions prior to such termination.  
14.15 If termination occurs under clause 14.4, all sums paid to AGS for any Goods (which have not yet been delivered) shall be refunded to the Customer, except that AGS shall be entitled to payment on a quantum meruit basis for all work done before said termination, provided that AGS takes all reasonable steps to mitigate the amount due.

14. FORCE MAJEURE

14.1 AGS or any person acting on its behalf shall not have any liability or responsibility for failure to fulfil any obligation under these Conditions so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, delayed or otherwise affected as a consequence of a Force Majeure Event.  
14.2 Should AGS wish to claim the benefit of this provision it shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:  
(a) notify the Customer of the nature and extent of such Force Majeure Event; and  
(b) use all reasonable endeavours to remove any such causes and resume performance under these Conditions as soon as possible.  
14.3 For the purposes of this clause 14.4, a Force Majeure Event means:  
(a) any labour disputes, strikes, lock-outs or other industrial disputes (whether involving that party's own workforce or a third party);  
(b) default of suppliers or subcontractors;  
(c) any event beyond the control of a party (or any person acting on its behalf) and includes, without limitation:  
(i) interruption or failure of utility services, including but not limited to electric power, gas or water;  
(ii) failure of any transport network;  
(iii) acts of God, including but not limited to fire, flood, earthquake, windstorm, loss at sea, epidemics, or other natural disaster;  
(iv) war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict;  
(v) compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);  
(vi) malicious damage;  
(vii) breakdown of plant or machinery;  
(viii) nuclear, chemical or biological contamination or sonic boom;  
(ix) fires, explosions or accidental damage;  
(x) collapse of building structures;  
14.14 If the Force Majeure Event prevails for a continuous period of more than 12 months, either party may terminate the Contract by giving 14 days notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall not be prejudicial to the rights of the parties in respect of any breach of these Conditions prior to such termination.  
14.15 If termination occurs under clause 14.4, all sums paid to AGS for any Goods (which have not yet been delivered) shall be refunded to the Customer, except that AGS shall be entitled to payment on a quantum meruit basis for all work done before said termination, provided that AGS takes all reasonable steps to mitigate the amount due.

15. GENERAL

15.1 Assignment and subcontracting.  
(a) AGS may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.  
(b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of AGS.  
15.2 Notices.  
(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.  
(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, on the second Working Day after posting.  
(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.  
15.3 Severance.  
(a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.  
(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.  
15.4 Waiver and Variation.  
(a) A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided for in the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.  
(b) Each party agrees that it shall not be bound by any conditions, notices, variations to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by AGS.  
15.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with the Contract.  
15.6 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Scots law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.

AGS ELECTRONICS LIMITED

Registered in Scotland with company number SC381257 and having its registered office at Unit M, Pitreavie Crescent, Pitreavie Business Park, Dunfermline, Fife, KY11 8PU. VAT Registration Number 994 0764 78. For further details please telephone 01383 624846, fax 01383 625004 or email sales@ags-e.co.uk