

## MEKTRON LIMITED STANDARD CONDITIONS OF PURCHASE FOR GOODS AND SERVICES

### **1 Definitions**

"**Mektron**" means Mektron Systems Limited, a company incorporated in England and Wales (under registered number 3075401 with its registered office at 83 Cambridge Street, London, SW1V 4PS and its successors in business and assigns

"**Conditions**" means the standard terms and conditions of purchase set out in this document

"**Contract**" is defined at Clause 2.2 below

"**Goods**" means the goods described in the Order (including any instalment or part) and for the purposes of these Conditions software shall be considered to be goods

"**IPR**" means all registered or unregistered intellectual property rights and applications for registration of intellectual property rights including but not limited to copyright, design right, patents, inventions, trade marks or trade names, know-how, confidential information and trade secrets, wherever in the world arising

"**Order**" means Mektron' purchase order, of which these Conditions form part

"**Services**" means the services described in the Order

"**Supplier**" means the person, firm or company identified in the Order and who accepts the Order

### **2 Basis of sale**

2.1 These Conditions are the only conditions upon which Mektron is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms and conditions. Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of Mektron

2.2 The Supplier's quotation to Mektron for the Goods and/or Services shall constitute an offer by the Supplier to supply the Goods and/or Services to Mektron. Mektron' Order for the Goods and/or Services shall be deemed to be an acceptance of the Supplier's offer, in which case a contract ("Contract") shall be formed, for the purchase and supply of the Goods and/or Services, comprising the quotation, Order and these Conditions

2.3 No terms and conditions endorsed on, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document will form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions

### **3 Price**

3.1 The price of the Goods and/or Services shall be stated in the Order and unless otherwise agreed in writing by Mektron shall be exclusive of value added tax but inclusive of all other charges, including but not limited to packaging, delivery and insurance

3.2 No variation in the price of the Goods and/or Services nor any extra charges will be accepted by Mektron unless expressly agreed by Mektron in writing

3.3 Mektron shall be entitled to any discount (for example, for prompt payment or bulk purchase) usually given by the Supplier to its customers, whether or not such discount is shown on the Supplier's own terms and conditions of sale or supply.

### **4 Terms of payment**

4.1 The Supplier shall be entitled to invoice Mektron for the price of the Goods and/or Services at any time after delivery of the Goods or performance of the Services, and the Supplier shall quote Mektron' Order number on each invoice.

4.2 Unless otherwise stated in the Order, Mektron shall pay the Supplier's invoice within thirty days of the end of the month of Mektron' receipt of the Supplier's invoice or, if later, within thirty days of Mektron' acceptance of the Goods or Services.

4.3 Without prejudice to any other right or remedy available to it, Mektron may set off any amount owing at any time from the Supplier to Mektron against any amount payable by Mektron to the Supplier.

### **5 Delivery**

5.1 The Supplier shall deliver the Goods to, and perform the Services at, the address specified in the Order. If no address is specified, then the Goods shall be delivered to and the Services shall be performed at Mektron' UK headquarters. The Supplier shall unload the Goods as directed by Mektron. The Goods shall be delivered carriage paid unless otherwise agreed in writing by Mektron prior to delivery.

5.2 The date and time for delivery and/or performance shall be specified in the Order or, if no such date is specified, within 28 days of the date of the Supplier's written notice of acceptance of the Order. Time for delivery and/or performance shall be of the essence of the Contract. If the Goods are not delivered or the Services are not performed by the due date then, without prejudice to any other right or remedy available to it, Mektron may:

5.2.1 cancel the Contract in whole or in part;

5.2.2 refuse to accept any subsequent delivery of the Goods or performance of the Services;

5.2.3 recover from the Supplier any costs reasonably incurred by Mektron in obtaining the Goods or Services in substitution from another supplier; and

5.2.4 claim compensation for any additional costs incurred by Mektron which are directly attributable to the Supplier's failure to deliver the Goods or perform the Services by the due date

5.3 The Supplier shall send a delivery note with each delivery which shows the Order number, date of Order, number of packages, contents and (in the case of part delivery) the outstanding balance to be delivered. The Supplier shall send an advice note bearing similar detail at the same time by first class post.

5.4 If Mektron agrees in writing that the Goods may be delivered in instalments, the Contract shall be construed as a single Contract in respect of each instalment.

5.5 Where Goods are damaged at the time of delivery and Mektron notifies the Supplier in writing of such damage within seven (7) days of the date of delivery, the Supplier shall at its own cost repair or replace such damaged Goods within seven (7) days of receipt of Mektron' notification.

### **6 Risk and ownership**

6.1 Risk in the Goods shall pass to Mektron when delivery of the Goods in accordance with Clause 5 above is complete (including unloading and stacking). Ownership of the Goods shall pass to Mektron at the same time.

6.2 Where the provision of the Goods and/or Services results in the creation of new work (eg: PCB / Backplane layouts, software) specifically for Mektron, Mektron shall own all IPR in such new work. The Supplier hereby assigns to Mektron all right, title and interest in and to all IPR in such new work, and agrees to do all things (including executing all documents) necessary to give full effect to the assignment contained in this Clause 6.2.

### **7 Warranties and liability**

7.1 The Supplier warrants that the Goods shall be free of inherent design defects and defects in materials or workmanship, and shall comply in all respects with the Order and any specification supplied by or advised to the Supplier by Mektron. These warranties are in addition to the statutory warranties and conditions (including but not limited to the warranties of satisfactory quality and fitness for purpose) implied in favour of Mektron by the Sale of Goods Act 1979.

7.2 The Supplier warrants that it shall carry out the Services using appropriately trained and qualified staff and to such high standard of care and skill as it is reasonable for Mektron to expect in all the circumstances.

7.3 The Supplier shall indemnify Mektron in full against all liability, losses, damages, injury, costs and expenses (including reasonable legal and other professional fees and expenses) awarded against or incurred by Mektron as a result of:

7.3.1 failure of the Goods or Services to comply with the warranties set out in Clauses 7.1 or 7.2 above;

7.3.2 any infringement or alleged infringement of any IPR caused by the use, manufacture or supply of the Goods and/or Services;

7.3.3 any claim made against Mektron in respect of any liability, loss, damage, injury, cost or expense sustained by Mektron' employees, agents or customers or any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods and/or Services

7.4 Without prejudice to any other right or remedy available to it, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract Mektron may:

7.4.1 reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for Goods so returned shall be paid forthwith by the Supplier; and/or

7.4.2 at Mektron' option, give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or supply replacement Goods or perform replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled; and/or

7.4.3 refuse to accept any further deliveries of the Goods but without any liability to the Supplier; and/or

7.4.4 carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract

### **8 Mektron' IPR and property**

Materials, equipment, tools, dies, moulds, drawings, specifications and data and IPR in such items provided by Mektron to the Supplier or used by the Supplier for the manufacture of the Goods shall at all times remain the exclusive property of Mektron or its licensors. The Supplier shall hold such items safely at its own risk and shall keep them maintained and in good condition until they are returned to Mektron.

### **9 Confidential Information**

The Supplier shall keep in strict confidence all information disclosed to it by Mektron (including but not limited to specifications, drawings, Electronic data, know-how and information regarding the products and business of Mektron) and shall use such information only for the purpose of fulfilling its obligations under the Contract ("Purpose"). The Supplier shall restrict disclosure of such information to those of its employees, agents or sub-contractors who need to know the information for the Purpose, provided always that such employees, agents and sub-contractors are subject to obligations of confidentiality no less onerous than those set out in this Clause 9. The obligations set out in this Clause 9 shall survive final performance or earlier termination of the Contract.

### **10 Force Majeure**

Mektron reserves the right to defer the date of delivery or payment or to cancel the Contract in whole or in part if it is prevented from or delayed in carrying on its business due to any circumstances beyond its reasonable control. Such delay or deferment shall last until the circumstances causing the prevention or delay in carrying on business have ceased.

### **11 Termination**

11.1 Mektron shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving written notice to the Supplier. If Mektron terminates the Contract in this way, Mektron' sole liability to the Supplier shall be the price of the terminated Goods or Services, provided always that the Supplier must take all reasonable steps to mitigate its loss arising out of such termination.

11.2 Either party shall have the right to terminate the Contract at any time by giving written notice to the other party if:

11.2.1 the other party breaches any of these Conditions, and in the case of a breach capable of remedy fails to remedy the breach within fourteen (14) days of the non-breaching party's written notice (such notice to identify the breach, to require its remedy and to state the non-breaching party's intention to terminate if the breach is not remedied);

11.2.2 a resolution is passed for the winding up of the other party, or a court of competent jurisdiction makes an order for the winding up or dissolution of the other party, or an administration order is made in relation to the other party, or a receiver is appointed over (or an encumbrancer takes possession of or sells) any asset of the other party; or an arrangement or composition is made with the other party's creditors; or an application is made to a court of competent jurisdiction for protection from the other party's creditors; or the other party ceases or threatens to cease to carry on business.

### **12 General**

12.1 Mektron may assign or transfer the Contract or any part of it without the prior consent of the Supplier. The Supplier may not assign the Contract without the prior written consent of Mektron.

12.2 No waiver by Mektron of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision. Any waiver of any breach of the Contract by Mektron shall only be effective if it is in writing and expressly waives the provision in question

12.3 The Supplier warrants that in supplying the Goods and/or Services to Mektron, it is not in breach of any import or export controls (whether of the United Kingdom, United States of America or elsewhere) which apply to the Goods and/or Services. The Supplier undertakes to inform Mektron of any re-export control which applies to the Goods and/or Services, and shall indemnify Mektron against any loss or damage which arises out of a breach by the Supplier of this undertaking.

12.4 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for reference only and shall not affect the interpretation of these Conditions

12.5 The Contract and these Conditions shall be governed and construed in accordance with English law and the parties hereby agree to submit any dispute arising out of the Contract to the exclusive jurisdiction of the English courts.