

# AVITECHNOLOGIES LIMITED

## TERMS AND CONDITIONS OF SALE

### 1. TERMS OF CONTRACT

1.1. These Terms and Conditions of sale shall be incorporated into all contracts of sale made by AVITechnologies Limited ('AVIT'), a company registered in Northern Ireland, for the sale of any goods. Any printed or other terms of condition used by the person, firm or company placing the order ('the Customer') are excluded. AVIT shall not be bound by any terms and conditions in the Customers order. If the Customer's order contains any terms and conditions then these Terms and Conditions of sale shall take precedence over such terms and conditions in the Customers order which shall be deemed deleted without notice.

1.2. Amendment of any contract can only be made by agreement between the parties and to bind AVIT must be in writing and signed by an authorised official of AVIT. Any such amendment will entitle AVIT to adjust the price and delivery dates appropriately.

2. **QUOTATION AND ACCEPTANCE OF ORDERS** No quotation by AVIT shall constitute an offer. Quotations may be withdrawn at any time. AVIT shall be bound by an order only upon issue of AVIT's standard acknowledgement of order form. AVIT shall not be obliged to accept any order.

3. **SPECIFICATION** Goods shall be supplied in accordance with the standard specification for the relevant type. AVIT reserves the right to make such improvements to and modifications of such specifications as it or its suppliers think desirable in all the circumstances.

4. **PACKAGING** The specification for packaging the products shall be entirely at the discretion of AVIT or its suppliers. AVIT or its suppliers shall have the right to pack all products in such manner and with such materials and in such quantities as it in its absolute discretion thinks fit and shall not be obliged to comply with any packaging instructions or requests of the Customer.

### 5. DELIVERY AND RISK

5.1.a. In the case of all UK sales involving delivery within the UK the goods will be delivered by AVIT or its suppliers to the Customers premises. Goods shall be at the Customers risk immediately on delivery into the Customers premises (or into custody on the Customers behalf if sooner) and should be insured accordingly.

5.1.b. Unless otherwise agreed in the case of all non-UK sales the goods will be delivered FOB to the premises or port nominated by AVIT or its suppliers. Risk of loss and damage to the goods shall pass to the Customer upon delivery FOB at the premises nominated by AVIT or its suppliers. The goods shall, once the risk has passed to the Customer in accordance with this clause be and remain at the Customer's risk at all times unless or until AVIT or its suppliers have taken possession of the goods and the Customer shall insure accordingly.

5.2. A delivery schedule should be agreed with AVIT prior to placing the order. While AVIT will endeavour to comply with such or any other agreed time(s) for delivery AVIT shall not in any circumstances be liable for any failure to do so.

5.3. AVIT reserves the right to charge carriage, insurance and storage in cases where the Customer refuses to accept delivery of goods supplied by AVIT in response to a duly authorised order received from the Customer.

5.4. Goods shall be signed for on receipt. Any alleged shortages, discrepancies or damage must be notified to AVIT within 12 days of receipt of goods by notice in writing addressed to AVITechnologies, R/O 24 Ramsden Road, London N11 3JE

5.5. The Customer agrees not to resell outside the UK any goods supplied by AVIT and covered by the Export of Goods (Control Order 1989 or any re-enactment thereof) or the Export Administration Act 1979 (as amended) (or any re-amendment thereof) without obtaining all necessary licences thereunder and agrees not to resell such equipment in the UK to a purchaser knowingly or being given reasonable grounds to suspect by the purchaser that the purchaser intends to export such equipment without first obtaining such licences or a copy of such licences obtained by the purchaser and the Customer agrees to impose upon persons purchasing such equipment obligations corresponding to those set out above.

### 6. PROPERTY AND RISK

6.1. AVIT shall retain title to the goods until it has received payment in full of all sums due in connection with the Contractor any other account. For these purposes AVIT has received a payment when the amount of that payment is irrevocably credited to its bank account.

6.2. The Customer shall store goods in such a way that they are clearly identifiable as AVIT's property and shall maintain records of such goods identifying them as AVIT's property. All goods supplied by AVIT in the Customers possession shall be presumed to belong to AVIT unless the customer can prove otherwise.

6.3. Until title to the goods has passed to the Customer in accordance with Clause 6.1 AVIT shall be entitled to trace the proceeds of sale of any goods owned by AVIT. Such proceeds shall be held by the Customer on trust for AVIT and at AVIT's request will be paid into a separate bank account.

6.4. The Customer will not give less than fourteen days notice to AVIT before applying to the Court or appointment of an administrator. Failure to give such notice shall be deemed to be a fundamental breach of the Contract.

6.5. Customers right to possession of the goods will cease at the earliest of the following dates

6.5.a. The date of a notice given under Clause 6.4 or the latest date on which such notice should have been given.

6.5.b. The date on which the Customer commits any act or makes any omission which would entitle a receiver to take possession of any asset or would entitle any person to present a petition for winding up or to apply for an administration order in respect of the Customer or any event referred to in Clause 6.6 occur.

6.6. If the Customer fails to make any payment to AVIT when due, compounds with its creditors, executes an assignment for the benefit of its creditors, commits any act of bankruptcy, or being a company, enters into voluntary or compulsory liquidation or has a receiver, manager, administrator or administrative receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of a debt or becomes insolvent or if AVIT has reasonable cause to believe that any of these events is likely to occur AVIT shall have the right without prejudice to any other remedies

6.6.a. To enter without prior written notice any premises where goods owned by it may be, and to repossess and dispose of any goods owned by it so as to discharge any sums owed to it by the Customer under this or any other contract;

6.6.b. To require the Customer not to resell or part with possession of any goods owned by AVIT until the Customer has paid in full all sums owed by it to AVIT under this or any other Contract;

6.6.c. To withhold delivery of any undelivered goods and stop any goods in transit.

6.7. Unless AVIT expressly elects otherwise any contract between it and the Customer for the supply of goods shall remain in existence notwithstanding any exercise by AVIT of any rights under Clause 6. The Customer shall be responsible for any costs and expenses incurred by AVIT in exercising its rights under Clause 6.

6.8. Nothing in Clause 6 shall give the Customer any right to return the goods, AVIT may sue the Customer for the price when the due (without prejudice to its other remedies hereunder) notwithstanding that property in the goods may not have passed to the Customer.

### 7. PRICE AND PAYMENT

7.1. Unless agreed separately and in writing by AVIT the price of the goods shall be the price ruling in AVIT's current Price List at date of dispatch. AVIT has the right to alter the prices contained in the Price List at any time without prior notice and it shall notify the customer of any price variations before dispatch of the goods and the customer shall be entitled upon receiving notification of such variation to cancel the contract by written notice to AVIT delivered within five days of such notification without incurring liability to AVIT.

7.1.a. Unless otherwise agreed in writing all money due to AVIT shall be paid within 30 days of the date of the invoice. Any sums unpaid shall thereafter bear interest at 2% per calendar month accruing from day to day.

7.1.b. Unless otherwise agreed in writing for sales certified for export outside the UK payment by the customer shall be made by irrevocable letter of credit, confirmed by first class London or Scottish clearing bank at least ten days prior to the scheduled delivery date.

7.1.c. Should the Customer make default in any payment or commit any act of bankruptcy or be the subject of a bankruptcy petition or execute an assignment for the benefit of his creditors, or being a company, enter into voluntary or compulsory liquidation or suffer a Receiver or Administrator to be appointed over all or any part of his or its assets then without prejudice to any other rights or remedies AVIT may at its option without incurring any liability cancel any undelivered or uncompleted portion of the contract or cancel any other contract with the Customer and stop any goods in transit any may without prejudice to any other rights demand immediate payment of any outstanding amounts which shall thereupon become due and payable.

### 8. GUARENTEE AND EXCLUSIONS

8.1. The goods will be subject to a standard form of guarantee for the relevant products such guarantee to be provided by AVIT's suppliers. AVIT or its suppliers may amend that guarantee from time to time on giving written notice to the Customer and the Customer will utilise such replacement guarantee and no other from the date of notice, including in respect of existing stock of AVIT goods.

8.2. In view of AVIT's suppliers giving of such guarantee it is agreed between AVIT and the Customer that the following are fair and reasonable.

8.2.a. All terms conditions and warranties which might otherwise be implied into the Contract are excluded, save anything implied by section 12 of the Sale of Goods Act 1979 (warranty as to title) as amended from time to time.

8.2.b. The Customer does not and has not relied upon AVIT's skill or judgement or that of its suppliers or any representation made by or on behalf of AVIT or its suppliers in connection with the contract and/or the goods unless such representation was contained in any printed specification or technical data published by AVIT or its suppliers or was given in writing and signed by a director of AVIT.

8.2.c. AVIT shall not in any event be liable in connection with any representation unless the same was contained in any printed specification or technical data published by AVIT or its suppliers, or was given in writing and signed by a director of AVIT.

8.2.d. The guarantee given by AVIT's supplier and the remedies expressly set out shall be the full extent of AVIT's liability which will not in any event exceed the cost of repair, replacement or credit at AVIT's option, of the goods. AVIT shall not in any circumstances be liable for any other loss or damage whatsoever including any consequential loss or any loss of profit, earnings or receipts or increased costs howsoever arising in any way in connection with the contract of the goods. This shall not apply to breach of the implied warranty of title, negligently caused death or personal injury or liability of AVIT under the Consumer Protection Act 1987 to a person injured by a defective product.

### 9. RETURNED GOODS

9.1. The Customer shall be responsible for the cost of carriage and insurance in respect of goods returned by the Customer for service or credit, which goods shall be at the risk of the Customer until actual receipt thereof by AVIT.

9.2. AVIT will not accept returned goods for credit or rectification unless such return has been authorised in writing by AVIT and the goods are received by AVIT in stock condition and AVIT reserves the right to determine at its own discretion whether to accept the return of the goods or whether to rectify the goods or whether to issue a credit note in respect thereof.

### 10. CANCELLATION

10.1. Orders, once accepted cannot be cancelled without mutual written agreement in which case the Customer agrees to indemnify AVIT for all loss suffered by it as a result of cancellation.

### 11. TECHNICAL INFORMATION AND TRADE MARKS

11.1. All technical information, specifications and drawings and any confidential information of any kind coming into the possession of the Customer in connection with any of AVIT's products remain the property of AVIT or its suppliers and shall not be used by the Customer other than for the performance of any contract between AVIT and the Customer. All documents shall be returnable on request.

11.2. All information of a technical nature and particulars of goods and performance given by AVIT are given in good faith, but no responsibility is accepted by AVIT for their accuracy and their supply shall not be used to found liability on AVIT's part.

11.3. The Customer shall not do any act in relation to the goods to which section 6 of the Trade Marks Act 1938 (as amended) applies. Namely the Customer shall not

11.3.a. Apply any trade mark of which AVIT or its suppliers are the proprietor or registered user to the goods after they have suffer any alteration in their state or condition, get-up or packing.

11.3.b. Alter, partly remove or partly obliterate any AVIT trademark or trademark of AVIT's suppliers.

11.3.c. Apply any other mark to the goods;

11.3.d. Add any other matter in writing, which is likely to injure the reputation of any AVIT trademark or any trademark of AVIT's suppliers.

### 12. AVAILABILITY OF GOODS

12.1. Delivery is subject to the availability of the goods and if owing to the non-availability of such goods or any other cause beyond the control of AVIT, AVIT shall be unable to carry out its obligations hereunder, it shall be entitled to determine this contract forthwith by giving notice in writing to the Customer to that effect.

### 13. SEVERABILITY

13.1. In the event that any of these Conditions or any part of them shall be held to be invalid or unenforceable, such invalidity or unenforceability of such condition or part thereof shall not affect the validity and enforceability of all remaining Conditions or parts of Conditions.

### 14. PROPER LAW AND JURISDICTION

14.1. English Law shall govern this Contract in all respects.

14.2. The Customer submits to the non-exclusive jurisdiction of the English Courts without prejudice to the right of AVIT to bring any action before any other court having jurisdiction.