

XTA Electronics Ltd - Terms & Conditions of Sale

(Relating to products under the brands XTA Electronics, MC² Audio, Ultrafide Audio)

General

- 1.1 In these conditions, "the Company" shall mean XTA Electronics Ltd (trading brand names – XTA Electronics, MC² Audio) and "the Products" shall mean all goods supplied under this Contract. All quotations are made and all orders accepted subject to these conditions. All other terms conditions or warranties whatsoever are excluded from the contract unless expressly accepted by the Company in writing (order acknowledgements do not constitute such acceptance). In the event of a conflict between these conditions and the specific terms and conditions of quotation, then the latter shall prevail. Acceptance by the customer of delivery of the Products shall be deemed to constitute unqualified acceptance of these conditions.
- 1.2 Unless otherwise stated therein, quotations shall be available for acceptance for a maximum period of 30 days from issue and may be withdrawn at any time by written or oral notice.
- 1.3 Any statement or representation (other than in the company's quotation or order acknowledgement) by the company its servants or agents upon which the customer wishes to rely must be set out in writing and attached to or endorsed on the Customer's order and in any such case the company may confirm, reject or clarify the point and submit a new quotation. Any statement or representation which is not so confirmed in writing is followed or acted upon entirely at the Customer's own risk and the Company shall have no liability in negligence or otherwise in connection therewith.
- 1.4 The contract is between the Company and the Customer as principals; neither the benefit nor the burden is assignable by the Customer without the Company's written consent; the contract may be assigned or sub-contracted by the company.
- 1.5 Unless specifically agreed to the contrary all trade terms shall be interpreted in accordance with current INCOTERMS – We offer EX-W (Ex-Works) and DAP (Delivered at Place) as standard. These INCOTERMS are usually indicated on financial documents relating to specific orders (Proforma, Order Acknowledgment, Invoice).
- 1.6 If, subsequent to any contract of sale which is subject to these conditions, a contract of sale is made with the same customer without reference to any conditions of sale or purchase, such contract howsoever made shall be deemed to be subject to these conditions.

Delivery

- 2.1 Unless otherwise agreed in writing by the Company, delivery shall be deemed to take place in the case of ex-works sales when the Products are made available for collection by the Customer or its carrier and in all other cases upon delivery by the Company to the agreed recipient or mainland UK delivery point, airport, or port.
- 2.2 Delivery is dependent upon prompt receipt of all necessary information from the Customer and any delays or alterations by the Customer may result in delayed delivery for which the Company shall not be responsible.
- 2.3 All dates and periods for delivery are estimated and do not constitute fixed times for delivery by the Company. Unless otherwise expressly agreed in writing by the Company, the Customer shall have no right to damages or to cancel the contract for failure for any cause to meet any delivery times given in the contract or subsequently set and even if it is expressly so agreed the liability in damages for the Company for delay in delivery shall not in any event exceed 5% of the net invoice value of the delayed Products or £10,000 whichever is the less.
- 2.4 Notwithstanding clause 2.3, the Customer shall be obliged to accept delivery on the date or within the period stated in the quotation or order acknowledgement or (if none is so stated) in the order or (if none is so stated) one month after the issue of notice in writing by the Company requiring the Customer to accept delivery. Failure by the Customer either to take delivery of or to make payment in respect of any one or more instalments of Products shall entitle the Company to treat the whole contract as repudiated by the Customer.
- 2.5 Where the Customer requests and the Company agrees to postpone delivery or where delivery is otherwise postponed without default by the Company, the Customer shall pay all costs and expenses including a reasonable charge for storage and transport occasioned thereby and the Customer shall pay for the Products in accordance with these conditions as if the same had been delivered in the ordinary course without reference to the postponement.
- 2.6 Unless otherwise expressly agreed the Company may affect delivery in one or more instalments. Where delivery is affected by instalments each instalment shall be treated as a separate contract governed by these conditions. No delay in the delivery of any instalment of Products or any defect therein shall entitle the Customer to terminate the remainder of the contract.
- 2.7 Customer shall be responsible for obtaining all consents necessary for the import of the Products into the country of destination.

Risk and Title

- 3.1 Risk shall pass to the Customer upon delivery, and the Customer is then solely responsible for all loss damage or deterioration to the Products.
- 3.2 Title to the products shall not pass to the Customer until either:
 - 3.2.1 the Company has received in cash or cleared funds all monies payable (whether due or not) to the Company under this and any other contracts whenever made between the Company and the Customer including contracts made after this contract; or
 - 3.2.2 when the Company serves on the Customer notice in writing specifying that title in the Products or any part thereof has passed.
- 3.3 Until title has passed to the Customer the Company may require the Customer to deliver up to the Company all Products in respect of which the Company has title and if the Customer fails to do so forthwith the Company shall be entitled to enter upon any premises where such products are kept for the purpose of recovering the same.
- 3.4 Until title to the Products has passed to the Customer pursuant to these conditions it shall possess the Products as fiduciary agent and bailee of the Company and shall store the Products separately from other goods not owned by the Company and shall ensure that they are clearly identifiable as belonging to the Company and the Company shall be entitled to enter upon any premises where such Products are kept for the purpose of satisfying itself that this condition is being complied with by the Customer.
- 3.5 In the event that the Customer has any contract with any other company under the ultimate control of the same parent company as has ultimate control of the Company under which any monies are outstanding (whether or not due) then the Customer shall not (notwithstanding that title would otherwise pass pursuant to clause 3.2 above) obtain title to the Products or other goods supplied by the Company under this or any other contracts between them until such other company has received in cash or cleared funds all such monies.

Cancellation And Amendment

- 4 No contract can be amended or cancelled except with the Company's written approval, and should such approval be given the Customer shall indemnify the Company against any costs losses or expenses resulting from any cancellation or amendment.

Prices

- 5.1 All prices are subject to VAT (if applicable) and to alteration without notice, and orders are accepted on the understanding that they will be invoiced at the prices and the terms current at date of despatch from works.
- 5.2 The Company shall be entitled at any time to make a reasonable adjustment to the price in the event of any alteration in quantity design or specification requested by the Customer.
- 5.3 The Company reserves the right at any time prior to delivery to increase the price if there is any increase in the cost of materials labour transport or utilities or if the costs of the Company are increased by any other factor beyond the reasonable control of the Company.
- 5.4 Outer packing will be provided, suitable for transportation by road, rail, sea or airfreight. Any additional packaging specified by the Customer and agreed to by the Company in writing will be chargeable as an extra.
- 5.5 The Customer shall be liable to the Company for any demurrage costs incurred in the event of vehicles being unduly delayed at the point of delivery.

Terms Of Payment

- 6.1 Unless otherwise agreed in writing by the Company, payment shall normally be in advance of despatch of goods, or by Letter of Credit ("LC") if agreed by XTA Electronics Ltd in advance of purchase in accordance with the following conditions:
 - 6.1.1 The beneficiary shall be identified as XTA Electronics Ltd – Registered office: The Design House, Vale Business Park, Worcester Road, Stourport On Severn, West Midlands DY13 9BZ, England. Goods may be shipped from either XTA Electronics (DY13 9BZ - UK) or MC² Audio (EX14 1YG – UK) factory premises.
 - 6.1.2 The LC must be irrevocable and confirmed by a first class UK bank.
 - 6.1.3 The LC must be valid for shipment for 3 months from date of establishment and for a further 15 days after latest shipment date, for presentation of documents required under terms of the LC.
 - 6.1.4 The LC should permit part shipment and transhipment.
 - 6.1.5 The LC should be established in pounds sterling.
 - 6.1.6 Bank charges to be for opener's account.
 - 6.1.7 Currency routing instructions as shown on the Company's invoices are to be observed.
 - 6.1.8 The Company will not commence manufacture or delivery until a valid LC has been received by the Company.
- 6.2 No disputes arising under this or any other contract shall interfere with prompt payment in full and the Customer agrees to waive any and all rights of set-off howsoever arising.
- 6.3 In the event of default of payment by the Customer the Company shall be entitled without prejudice to any other right or remedy:
 - 6.3.1 to suspend without notice all further deliveries on this or any other contracts between the Company and the Customer.
 - 6.3.2 to charge interest (after as well as before judgement) on any amount outstanding at the rate of 2% per annum above the base rate of Lloyds Bank plc in force at the time when payment was due; and/or
 - 6.3.3 to serve notice on the Customer requiring immediate payment for all goods supplied by the company under this and all other contracts between them whether or not payment is otherwise due or invoiced.
- 6.4 Supplies to export houses may be zero rated for VAT purposes provided that all relevant conditions and requirements from time to time in force are satisfied. If the export house fails to provide satisfactory proof of export within one month (or other requisite period) of the time of supply or otherwise to comply with all relevant conditions and requirements for zero rating, the Company shall be entitled to invoice and receive payment of VAT at the rate in force at the time of supply and payment shall be due on the later of the date of such invoice and the due date for payment of the price for the Products.

Specifications

- 7.1 Subject to clause 7.2 the Products shall be generally in accordance with the published specification of the Company thereof (if any) and (if none) of normal industrial and commercial quality or as otherwise required by the contract.
- 7.2 The company reserves the right to make changes in dimensions or other specifications of the Products as are required to conform to applicable standards or laws or are otherwise within reasonable limits having regard to the nature of the Products. Dimensions specified by the Company are to be treated as approximate only unless it is specifically agreed in writing that exact measurements are required.

Loss Shortages And Damage Apparent On Delivery Inspections

- 8.1 The Customer shall have no claim for loss, shortages or damage on delivery which are or would be apparent on inspection unless the Customer:
 - 8.1.1. unpacks and inspects the Products as soon as reasonably practicable following receipt
 - 8.1.2. notifies the Company of any loss, shortages or damage (otherwise than by a qualified signature on the delivery note) within three working days of receipt; and
 - 8.1.3. demonstrates to the satisfaction of the Company that such loss, shortages or damage occurred prior to delivery.
- 8.2 The Customer shall have no rights in respect of loss shortages or damage unless the Company is given a reasonable opportunity to inspect the Products and investigate any complaint before any use of or alteration to or interference with the Products.
- 8.3 On a valid complaint made in accordance with this clause 8 the Customer shall be entitled to repairs or to replacements for the affected Products or at the Company's option a credit for the price thereof but the Company shall have no further liability whatsoever. If a complaint of loss shortages or damage on delivery is not made to the Company in accordance with this clause 8 then the Products shall be deemed to be delivered complete and undamaged in accordance with the contract and the Customer shall be bound to pay for the same accordingly.
- 8.4 Loss shortages or damage in a delivery or any instalment delivery shall not be a ground for termination of the contract or the remainder of the contract (as the case may be).

Warranty

- 9.1 The Company warrants that Products which do not comply with either clause 7.1 or Sections 13 to 15 of the Sale of Goods Act 1979 or are shown to have been defective at delivery as a result of faulty design workmanship or materials (other than free-issue materials) shall either be repaired or replaced or that, at the Company's option, a credit or refund for the price thereof shall be given provided always that:
 - 9.1.1. the Company receives written notice of the defect within 3 months of delivery;
 - 9.1.2. no alteration to or interference with the Products takes place before the Company is given access to the Products to inspect and test the same;
 - 9.1.3. the defect does not consist of a loss shortage or damage to which clause 8 is expressed to apply;
 - 9.1.4. the defect does not arise by reason of a design specification or instruction given by the Customer.
- 9.2 The benefit of clause 9.1 shall only extend to Products or parts not manufactured by the Company to the extent that the Company has equivalent recourse against the manufacturer or supplier thereof.
- 9.3 The Customer shall indemnify the Company in respect of loss or damage arising from any use made of Products after the Customer became or ought reasonably to have been aware of a defect.
- 9.4 In the event of a valid claim being made in accordance with clause 9.1:
 - 9.4.1. the Customer shall be bound to accept repaired or replacement products or at the Company's option credit or repayment and shall not be entitled to terminate the contract;
 - 9.4.2. if the Company does not repair or replace Products within 60 days or such longer time as may be reasonable then the Customer's sole remedy shall be an entitlement to full credit or repayment in respect of the defective products;and the Company shall be under no further liability in respect of any loss or damage arising from the defect or from any delay before repair replacement credit or refund is effected.

Liability

- 10.1 The Company does not exclude liability arising under Section 12 of the Sale of Goods Act 1979 (good title) or for death or personal injury caused by its negligence as defined in the Unfair Contract Terms Act 1977.
- 10.2 Save as provided under clauses 8, 9 and 10.1 the Company shall have no liability to the Customer in connection with or arising from any defect or failure in the Products or otherwise due to the quality condition suitability durability safety or any other aspect or feature of the Products except to the extent that the total aggregate liability of the Company does not exceed £1 million, or if the contract falls within section 26 of the Unfair Contract Terms Act 1977, does not exceed the lesser of the contract price and £500,000. The Customer agrees to insure adequately to cover any loss or damage in excess of the limit of the Company's liability.
- 10.3 In clause 10.2 the term "liability" means any form of liability whatsoever including but not limited to liability in misrepresentation and under contract common law equity and any statutory provision whether or not based on negligence or breach of any express or implied duty to act with care or skill.
- 10.4 Without prejudice to clause 10.1 but notwithstanding any other provisions of these conditions the Customer shall have no claim against the Company in respect of any consequential or financial loss whether direct or indirect including but not limited to any costs of dismantling fitting or other work required in connection with the provision of a repair or replacement, any loss of production profits contracts or anticipated savings and any claims made against the Customer by any third party.
- 10.5 To the extent that any liability of the Company is expressed to be limited or excluded by these conditions the Customer shall indemnify the Company in respect thereof.

Confidential Information Etc.

11. All drawings, documents, records, computer software, and other information supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not without written consent of the Company either give away, loan or sell the same or extracts there from or copies thereof or use the same in any way except in connection with the Products in respect of which they are issued.

Patent Indemnities

- 12.1 If the Customer is subject to a claim or threatened with any action alleging that the Products in the form supplied infringe any patent copyright design right or other intellectual property rights then provided that the Customer promptly informs and fully co-operates with the Company and if requested allows the Company the conduct and defence thereof on the Customer's behalf, the Company will indemnify the Customer against any award of damages for infringement made in any such action by a court or other competent body against the Customer. Further, if the Products are infringing the Customer agrees that the Company shall have the option at its own expense either to modify the Products so that they do not infringe; to replace the Products with a non-infringing substitute; to procure for the Customer the right for the Customer to continue its use of the Products; or to repurchase the Products from the Customer at the price paid by the Customer less an allowance for the use made thereof.
- 12.2 The Company shall have no liability in respect of claims for infringement or alleged infringement of third parties' patent or other intellectual property rights arising from the manufacture or supply of the Products to the Customer's instructions or in accordance with designs plans or specifications given by the Customer and the Customer shall indemnify the Company against all losses damages expenses costs or other liability arising from such claims.
- 12.3 In the case of products not manufactured by the Company, the Company gives no assurance or guarantee whatsoever that the sale or use of the Products will not infringe patent copyright or other industrial property rights of any other person firm or company.

Customer's Drawings And Information

- 13 The Customer shall be solely responsible for ensuring that all drawings information advice and recommendations specified or given to the Company by the Customer or its agents servants consultants or advisers are accurate correct and suitable. Examination or consideration by the Company of such drawings information advice or recommendations shall not result in any liability on the part of the Company.

Company Literature

14. The information contained in the advertising sales technical and other literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed otherwise any illustrations performance details examples of installations and methods of assembly and all other information and data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless it is specifically referred to in the quotation or order acknowledgement or the Customer shall have complied in respect thereof with clause 1.3.

Termination

- 15.1 Without prejudice to any other rights or remedies of the Company it shall be entitled in any of the following circumstances to terminate (in whole or in part) this and any other contract whenever made between the Company and the Customer and/or to suspend deliveries and/or to receive upon demand payment of all monies payable under such contracts whether or not otherwise due:
 - 15.1.1. the Customer makes or proposes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation;
 - 15.1.2. a bailiff takes possession or a receiver is appointed of any of the property or assets of the Customer;
 - 15.1.3. the Customer becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business;
 - 15.1.4. the Company reasonably believes or apprehends that any of the events mentioned above or any equivalent under any relevant laws has or may occur;
 - 15.1.5. the Customer commits any breach of this or any other contract whenever made between the Customer and the Company.

Force Majeure

- 16.1 The Company shall be excused performance of its obligations whilst and if affected by act of God governmental restriction condition or control, any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not, default by suppliers of the Company, shortage of materials or by any other act matter or thing beyond its reasonable control including failure by the other party to carry out anything required for performance of the contract.
- 16.2 In the event that the Company does not perform its obligations by reason of any of the causes referred to in clause 16.1 within six months after the time for performance then either party may by written notice terminate the contract without liability save that the Customer shall pay for any products delivered or completed at the time of termination.

Tools And Supplies

17. Any tools (such as jigs, dies, etc.) which the company may construct or supplies that the Company may acquire specifically in connection with the Products shall, notwithstanding any charges the Company may make for them, be and remain the Company's sole property and in the Company's possession and control without restriction.

Free Issue Materials

- 18.1 Free issue materials shall be insured by and remain at the risk of the Customer at all times and the Company shall be indemnified by the Customer against any loss damage injury or expense whatsoever arising directly or indirectly there from and the Company shall not be liable for loss of or damage to any such materials during fabrication by the Company or by any sub-contractor employed by the Company or whilst on the premises of the Company or of any such sub-contractor or in transit to or from the premises of the Company or of any such sub-contractor provided that the Company may at its sole discretion make a contribution towards the replacement costs of such materials.
- 18.2 An allowance for material lost as process scrap is (where applicable) included in the contract price and no such losses shall be the subject of any claim by the Customer or contribution by the Company.

Consumer Protection Act 1987

- 19.1 Where the Customer purchases the Products for use or incorporation with any composite products to be assembled produced processed packed or supplied by the Customer or for resale or supply ancillary to any such composite products or other products supplied by the Customer then:
- 19.1.1. the Customer shall forthwith on demand produce for inspection by the Company copies of all written instructions information and warnings to be supplied by the Customer in relation thereto provided nevertheless that such inspection or right to inspect shall not give rise to any responsibility or liability on the part of the Company; and
- 19.1.2. the Customer shall indemnify the Company against any losses costs and damages that the Company may suffer or incur in the event that any claim is made against the Company in relation thereto if the Products did not comprise the defective element thereof or were rendered defective by reason of actions or omissions of the Customer (including without limitation the supply of defective free-issue materials) or were rendered defective by reason of instructions or warnings given or omitted by the Customer or other reseller.
- 19.2 For the purposes of clause 19.1 the term "defective" shall be interpreted in accordance with the definition contained in Part 1 the Consumer Protection Act 1987.

Health And Safety

20. The Customer agrees to pay due regard to any information supplied by the Company relating to the use for which the Products are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned, serviced or maintained by any person at work and the Customer undertakes to take such steps as may be specified by such information or otherwise necessary to ensure that as far as is reasonably practicable the Products will be safe and without risk to health at all times as mentioned above.

Law And Jurisdiction Etc.

- 21.1 The contract shall be governed and interpreted exclusively according to the Laws of England. The parties hereby agree to submit to the exclusive jurisdiction of the English courts provided that the Company may at its option take proceedings in the courts of the state in which the Customer is domiciled.
- 21.2 No waiver of or delay or failure by the Company to exercise any rights or remedies shall prejudice or preclude any future or further exercise thereof.
- 21.3 If any provision of these conditions shall be held invalid or unenforceable in whole or in part then the unaffected provisions shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these conditions.
- 21.4 If the contract includes the supply of services and no general conditions of the Company relating specifically to the supply of services are made applicable to such services then these conditions shall mutatis mutandis apply to such services as they would apply to Products and in such event clause 9.1 will be deemed to include a reference to sections 3 to 5 of the Supply of Goods and Services Act 1982 either in addition to or in place of the reference to sections 13 to 15 of the Sale of Goods Act 1979 as may be appropriate.

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