



GB Electronics (UK) Ltd, Geoff Bullen Electronics and GBE Designs Ltd.: Terms and Conditions of Trade and Limitations of Liability

1 TERMS AND CONDITIONS OF TRADE

- 1.1 *Definitions – Geoff Bullen Electronics, GB Electronics (UK) Ltd. and GBE Designs Ltd. are hereby referred to (singularly or collectively) as GBE.*
- 1.2 *These terms and conditions apply to every contract entered into or on behalf of GBE for the supply or sale by the seller of goods and/or services and/or design work and apply in place of and override any previous terms or conditions referred to by the seller in negotiations or otherwise. However they will be deemed to be in addition to any specific Non Disclosure or Confidential Agreement undertaken by the trading parties.*
- 1.3 *In these terms and conditions the buyer or customer means the person, firm or company purchasing the goods or services from the seller.*
- 1.4 *All quotations and all orders which are made and accepted are subject to these terms and conditions and any variation shall only be binding upon the seller and buyer if made in writing by the parties.*
- 1.5 *All quotations are valid for 30 (thirty) days from the date of issue. For the supply of components they are subject to prior sale. .*
- 1.6 *Orders may not be cancelled unless the seller consents in writing and the buyer will indemnify the seller against all losses incurred and in particular for the manufacture or preparation which will include, where applicable, the cost of special tools specifically made in connection with the contract.*
- 1.7 *Time will not be the essence of the contract and any times quoted for despatch of the goods are to be treated as estimates only and the seller shall not be liable for failure to dispatch with such time limits. The seller shall not be responsible for delays in despatch caused by instructions or lack of instructions from the buyer or by industrial action or by any cause whatsoever beyond the seller's reasonable control.*
- 1.8 *Non delivery of a consignment will not be considered unless notice in writing is given within ten days of the date despatched advised to the buyer or the date of invoice, whichever is later.*
- 1.9 *Unless otherwise agreed, goods rejected by the buyer as not complying with the contract must so be rejected within seven days of receipt by the buyer and notice given to the seller in writing (or electronic format).*
- 1.10 *Services and design work will be invoiced as each individual section as defined within the quotation is completed. Any components bought in relation to this project will be charged at the end of the month they are bought, with an agreed mark-up. All test and calibration charges will be passed on to the client.*
- 1.11 *Unless otherwise agreed in writing, payment in full is due 30 days from the date of*

the invoice or despatch of the goods whichever is the earlier. The seller reserves the right to charge interest at 2.5% above the current Bank of England lending rate or any periods in excess of these terms. Interest shall be calculated on a compounded monthly basis.

- 1.12 *Save as otherwise provided by other conditions Sections 12-15 of the Sale of Goods Act 1979 are to be implied into this contract as the contract does not affect your statutory rights.*
- 1.13 *The buyer must give the seller immediate written notice of any defect in the goods and such goods shall be returned by the buyer to the seller at the buyers expense, unless otherwise agreed and if such goods prove to be defective as a result of faulty material or workmanship the seller shall replace or repair such goods. Defects in quality or dimension in any delivery shall not be a ground for cancellation of the remainder of the order.*
- 1.14 *Until the seller has been paid in full for the goods comprised in this or any other contract between the seller and buyer the goods remain the property of the seller though the risk passes to the buyer at the point of delivery named in the contract.*
- 1.15 *If the buyer fails to pay for the goods on the due date or commits any act of bankruptcy or if any resolution or petition to wind up the buyers business shall be passed on if the Receiver of the buyers undertakings is appointed or the buyer makes any composition with his creditors the seller may recover possession of the goods at any time from the buyer and for that purpose the seller, his servants agents or any other person duly authorised by it may enter any land or building upon which the goods are situated.*
- 1.16 *If the buyer fails to pay for the services or design work on the due date or commits any act of bankruptcy or if any resolution or petition to wind up the buyers business shall be passed on if the Receiver of the buyers undertakings is appointed or the buyer makes any composition with his creditors the seller is deemed to retain all Intellectual Property of the design work carried out during the contract. All relevant design files, information, circuit layout, prototypes, component lists, firmware or source code must be returned to the seller.*
- 1.17 *The buyer shall indemnify the seller against all damages, penalties, costs and expenses for which the seller may become liable through any work to be done in accordance with the buyer's specification which is an infringement of a patent or copyright or registered design.*
- 1.18 *Upon approval of design by the client, by manner of written or electronic correspondence, the client thereafter assumes complete responsibility for the design and any products manufactured with reference to any part of the design. Any perceived defects, faults or failures of the design or product manufactured with any part of the design work are the responsibility of the client. GBE cannot be liable for any alterations of the design, or costs incurred on any manufacturing of derivative products.*
- 1.19 *Any tools which are supplied by the buyer will pass to the seller and the seller shall have full rights of ownership until such time as all debts due by the buyer to the seller are paid in full. In the event of the tool being supplied by a third party then the buyer shall notify the seller of the interest of the third party immediately upon the supply of the tools and the buyer will produce an undertaking and acknowledgement from the third party that the tools are and will be subject to a lieu by the seller for all debts as the buyer until paid. Until payment is made the seller shall have full rights to use the tools as if they were beneficially entitled.*
- 1.20 *For design projects in the event that no prototype is constructed, the client shall be*

deemed to accept the final design as correct and complete and GBE shall again not be liable for any defects, mistakes or omissions that may subsequently appear, nor for any loss or damage or expense arising therefore.

- 1.21 *Unless otherwise agreed contracts shall in all respects be construed and operated as an English contract in conformity with English law.*

2 LIMITATIONS OF LIABILITY AND INSURANCE

- 2.1 *Neither party excludes or limits liability to the other party for (a) death or personal injury caused by its negligence or, (b) any breach of any obligations under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or, (c) any fraudulently made statement or representation.*
- 2.2 *Subject to Clause 2.1 the liability of either party to the other in any circumstances, whether in contract or tort or otherwise shall be subject to the financial limits set out in this Clause 2.2:*
- 2.2.1 *The liability of either party for all defaults in respect of any direct loss of or damage to the tangible property of the other under the Agreement shall in no event exceed £1,000,000 (one million pounds) per incident or series of incidents related to a common cause; and*
- 2.2.2 *The aggregate liability of either party under the Agreement for all losses, damages, costs or expenses arising out of or in connection with defaults other than a default governed by Clause 6.2.1 shall in no event exceed the greater of £110,000 (one hundred and ten thousand pounds) or 125% of the total charges paid and payable under the Agreement to which the liability relates.*
- 2.2.3 *In respect of Intellectual Property Rights the remedies provided for under Clause 3 will be exhausted before the provisions of sub-clause 2.2.2 become effective.*
- 2.3 *Subject to Clause 2.1 neither GBE nor its directors, employees and contractors shall be liable to the Customer in any circumstances whether in contract, tort or otherwise for any loss of goodwill, use, revenue, profit, production, anticipated savings, business, reputation or any type of indirect or consequential loss, damage, injury or expense.*
- 2.4 *The parties expressly agree that should any limitation or provision contained in this Clause 2 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed to be omitted but if any party becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Agreement.*
- 2.5 *The directors, employees and contractors of GBE or any licensor of Software may rely on the terms of Clause 2 and the provisions of the Contracts (Rights of Third Parties) Act 1999.*
- 2.6 *Except as provided for in sub-clause 2.5 a person or company who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.*
- 2.7 *The Customer shall have no right to specific performance of any contract to which GBE is a party.*
- 2.8 *These terms and conditions state GBE's total liability whether in contract, tort or otherwise in respect of its obligations and liabilities under these terms and conditions and are in lieu of and exclude any conditions and warranties implied by statute law or otherwise insofar as the law allows.*

3 INTELLECTUAL PROPERTY RIGHTS

- 3.1 *GBE retains any Intellectual Property Title on design work it is solely or partially responsible for, unless explicitly agreed by both parties. In release of the design to the client, GBE grants them a free license to use the design for purposes agreed in the initial client specification and/or any quotation for work provided by GBE*
- 3.2 *For any breach of GBE's Intellectual Property Rights, Design Rights or Copyright any or all of the following remedies may be taken:*
- 3.2.1 *Damages sort to compensate for the infringement, based on estimating the amount of royalty payments lost owing to the infringement;*
- 3.2.2 *An Injunction may be taken to enforce cessation of the infringement;*
- 3.2.3 *Account of Profits to receive any profits the infringing party may have received by virtue of the infringement.*
- 3.2.4 *Order For Delivery Up to enforce delivery (to GBE) of the infringing design/s and/or destruction of the infringing item/s.*
- 3.3 *GBE cannot warrant that concepts presented will be free of existing IPR, but do undertake that they will not knowingly copy existing IPR. GBE shall not be liable for patent, copyright or registered design infringement and the client agrees to indemnify GBE in respect of any loss, damages, costs or expenses incurred in respect of any claim by a third party for infringement of patent, copyright and registered design protection.*
- 3.4 *Unless otherwise agreed contracts shall in all respects be construed and operated as an English contract in conformity with English law; or in the appropriate domicile where the infringement occurs.*
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