

## General Terms and Conditions of Sale and Delivery

### 1 Scope of the Terms and Provisions

- 1.1 All transactions for the sale and delivery of goods and/or any other related services (the “**Goods**” and “**Services**” or collectively the “**Goods and/or Services**”) by CHERRY ELECTRONICS (HONG KONG) COMPANY LIMITED (“**CHERRY**”) shall be governed by the General Terms and Conditions of Sale and Delivery set forth herein (these “**General Terms**”). These General Terms shall apply to all subsequent transactions made between CHERRY and its contractual partner (the “**Purchaser**”) in a Contract as defined in Clause 2.2 hereinbelow, regardless of whether they are expressly agreed upon again.
- 1.2 Terms and conditions provided by the Purchaser, if contradictory to or conflicting with these General Terms, shall not be binding upon CHERRY unless with the written consent of CHERRY.
- 1.3 All agreements or arrangements in relation to a Contract, whether oral or written, contrary to or deviating from the General Terms shall not be effective without CHERRY explicit written confirmation. This shall also apply to the cancellation of this clause on written form itself.
- 1.4 Complementary to these General Terms, the current version of the International Commercial Terms published by the International Chamber of Commerce (the “**INCOTERMS**”) shall apply as reissued from time to time. In the event of a conflict or contradiction between the INCOTERMS and these General Terms, the latter shall prevail.
- 1.5 No addition, alteration or substitution of these General Terms will bind CHERRY or form part of any Contract unless it is expressly accepted in writing by a person authorized to sign on behalf of CHERRY.
- 1.6 The construction, validity and performance of these General Terms and the relevant Contracts shall be governed by the laws of Hong Kong Special Administrative Region.

### 2 Formation, Conclusion of Contracts and Specifications of the Goods and/or Services

- 2.1 Where an offer in relation to the sale and delivery of the Goods and/or Services is made to a potential purchaser (a “**Potential Purchaser**”) by CHERRY (the “**Offer**”), acceptance of the Offer by the Potential Purchaser must be made in writing.
- 2.2 A binding purchase order (the “**Contract**”) in relation to any Offer is only formed when:
  - (a) The Potential Purchaser duly accepts the Offer within two (2) weeks from the date thereof in accordance with Clause 2.1 above; or

- (b) Where the Offer is accepted by the Potential Purchaser after the lapse of the period for acceptance under Clause 2.2(a) above and CHERRY acknowledges the Potential Purchaser's acceptance and confirms the validity of the terms of the Offer in writing, or delivers the Goods and/or Services in accordance with the terms of the Offer.
- 2.3 Any subsequent amendments, changes or sub-agreements affecting the terms of an Offer or a Contract shall only be legally binding with the written confirmation of CHERRY.
- 2.4 Unless otherwise agreed in writing, CHERRY reserves the right to make changes to the Goods and/or Services concerned in the relevant Contract in terms of the specifications, construction, material and design of such Goods and/or Services, as long as such modifications are due to technical innovations or represent technical improvements. Additionally, objectively reasonable minor deviations shall be deemed accepted by the Purchaser.
- 2.5 Neither obvious errors, spelling mistakes and errors in calculation nor any minor changes and modifications in or of CHERRY sales materials and price lists shall entitle a Purchaser to any claims against CHERRY based thereon. The same shall apply with regard to any technical or functional modifications and any other reasonably acceptable alterations of the data and information contained in CHERRY advertising and sales material.
- 2.6 In cases where import and export licenses, authorizations for currency transactions or similar authorizations (the "**Authorizations**") are required for the implementation of the Contract, the Purchaser shall make all efforts to obtain the required Authorizations in time for the fulfillment of the Contract, unless expressly otherwise agreed upon in writing.
- 2.7 If the necessary Authorizations have not been obtained within three (3) months of the signing of the respective Contract, CHERRY may consider the Contract not concluded. In such case CHERRY shall notify Purchaser of this decision without delay.

### **3 Prices**

- 3.1 All prices referred to in the Contract shall be net amounts on an ex-factory or ex-warehouse basis excluding freight, transportation and insurance expenses, if applicable, unless otherwise mutually agreed in writing.
- 3.2 All payments of any sum required under the Contract shall be in Euro, unless otherwise specified by CHERRY in writing.
- 3.3 In any event, any and all customs duties, sales and value added taxes and other ancillary costs are to be borne by Purchaser.
- 3.4 CHERRY shall have the right to revise its pricing schedule without the consent or approval of, or prior notice to the Purchaser, if the time period between the date of order confirmation and delivery exceeds six (6) weeks.

#### 4 Terms of Payment

- 4.1 Unless otherwise mutually agreed in writing, all invoices issued by CHERRY shall be due for payment of the exact amount as specified therein immediately upon receipt. Where a discount has been given by CHERRY, payment shall be made in accordance with Clause 4.4 hereinbelow.
- 4.2 In the event that the Purchaser fails to pay any sum to CHERRY within thirty (30) days after the same is due under an invoice issued by CHERRY, such sum shall automatically bear interest for the period from and including the date on which such sum becomes due through and including the date of payment at eight percent (8 %) per annum above the prime rate quoted by The Hongkong and Shanghai Banking Corporation Limited from time to time. CHERRY shall, however, be entitled to claim additional damages caused by any late payment or default in payment of Purchaser.
- 4.3 Payment shall only be deemed to be settled provided CHERRY has full access to possess, control and use of the respective funds. Money orders, cheques, promissory notes, bills of exchange and the like shall only be accepted if expressly approved by CHERRY in writing in advance and shall be subject to complete and unrestricted crediting to the accounts designated by CHERRY. All relevant processing, handling and discounting fees shall be solely borne by Purchaser.
- 4.4 Any discount granted by CHERRY is subject to the acceptance of delivery of the Goods and/or Services and timely settlement of the relevant invoice by the Purchaser. In the event that an Event of Default in Payment as defined herein under Clause 4.5 occurs, CHERRY shall be entitled to revoke all previously granted discounts and the Purchaser will be liable to pay the full sum as stated in the relevant invoice without any discount. The same shall apply *mutatis mutandis* in the event that CHERRY has accepted checks, promissory notes, bills of exchange and the like.
- 4.5 An event of default in payment on the part of the Purchaser (an “**Event of Default in Payment**”) occurs
- (a) When the Purchaser fails to settle an invoice within the contractual agreed payment term after the same is due; or
  - (b) If CHERRY becomes aware that a bankruptcy/winding up petition has been filed against the Purchaser.
- 4.6 If an Event of Default in Payment occurs, in addition to Clause 4.4, CHERRY shall be entitled to terminate all existing agreements with the Purchaser, unless the Purchaser supplies an irrevocable Letter of Credit on terms determined by CHERRY, effects payment in full or supplies CHERRY with any other collateral or security as CHERRY may specify and accept at its sole election.

- 4.7 All payments made by the Purchaser shall be free from deduction and set-off, except where counterclaims of the Purchaser are not disputed by CHERRY or are finally assessed by a competent court. To the same extent the Purchaser shall not be entitled to withhold any payment owed to CHERRY. The Purchaser hereby agrees that CHERRY, at its sole discretion, may offset accounts receivable against accounts payable of Purchaser.

## **5 Terms and Modalities of Delivery and Termination of Contract**

- 5.1 Any estimated delivery date and time shall be non-binding and is subject to the timely supply of any Third-Party Products/Services as defined in Clause 5.4 below, unless otherwise mutually agreed in writing.
- 5.2 CHERRY shall be entitled to make deliveries or perform services in part. CHERRY shall not be deemed to have breached the time of delivery of the Goods and/or Services agreed with the Purchaser if the delivery of the Goods and/or Services is expedited for a reasonably acceptable period of time and the Purchaser has been notified accordingly.
- 5.3 Delivery of the Goods and/or Services by CHERRY shall only be effected after
- (a) The receipt and clarification of all required documents specified by CHERRY;
  - (b) The obtaining of Authorization by the Purchaser in accordance with Clause 2.6 above (if any);
  - (c) Full completion of any participation and cooperation necessary by the Purchaser (if any);
  - (d) Clarification of all technical issues with the Purchaser relating to the respective delivery of the Goods and/or Services; and
  - (e) Where any subsequent changes or amendments are made to the Contract by the Purchaser, the terms of the respective Contract are agreed by both the Purchaser and CHERRY.
- 5.4 Where the supply of any Goods and/or Services involves materials, components , goods and/or services from or manufactured by any third party vendor (the “**Third-Party Products/Services**”), if the delivery or provision of the Third-Party Products/Services to CHERRY is not made on time or that the Third-Party Products/Services are deemed unfit for delivery to or use by the Purchaser, rendering the performance of CHERRY’s obligations under a Contract with the Purchaser not possible or not reasonably viable, CHERRY shall be entitled to terminate the relevant Contract with the Purchaser or to unilaterally postpone any agreed delivery.

- 5.5 In any event where CHERRY fails to fulfill its contractual obligations due to reasons for which CHERRY is neither responsible nor liable, such as an act of God, governmental restrictions, fire, strike, lockouts, traffic limitations, shortages of production, energy and/or raw materials and in general all such events which might adversely affect the production and/or delivery of the Goods and/or Services concerned (e.g. mobilization, wars, riots, natural disasters and other unforeseeable circumstances beyond CHERRY's reasonable control), CHERRY shall be entitled to terminate the respective Contract in whole, amend the respective Contract, or to extend the delivery period until a reasonable time after such events have passed. The above shall be applicable *mutatis mutandis* to the extent that such circumstances apply to any of CHERRY suppliers and/or sub-suppliers.
- 5.6 Where an event specified under Clauses 5.4 and 5.5 occurs and hinders CHERRY's performance of its contractual obligations under the Contract for a period of more than three (3) months, the Purchaser may, after granting CHERRY an additional reasonable respite of at least three (3) weeks, terminate the respective Contract.
- 5.7 Where CHERRY is to arrange for the delivery of the Goods, the computation of freight cost shall be based upon the weight and sizes of the Goods as assessed by CHERRY and CHERRY shall reasonably decide on the concrete carrier(s) and shipping routes as it sees fit. CHERRY shall, however, neither be liable nor responsible for having failed to select the cheapest and speediest way of transportation.

## **6 Passage of Risk**

- 6.1 Unless otherwise agreed in writing, the Goods and/or Services shall be delivered at the Purchaser's cost and risk. Risks in the Goods and/or Services shall pass to the Purchaser upon delivery of such Goods and/or Services to a carrier appointed for the delivery of the same to the Purchaser; where the parties have agreed in writing that freight costs shall be borne by CHERRY, the risk in the Goods and/or Services shall pass to the Purchaser upon the leaving of such Goods and/or Services from the warehouse or factory of CHERRY. The foregoing shall apply *mutatis mutandis* in the event of deliveries in part.

## **7 Default of Acceptance**

- 7.1 In the event that the Purchaser does not accept or refuses to accept (in part or in whole) the delivery of the Goods, CHERRY shall issue a warning setting out a reasonable remedy period. If the Purchaser unreasonably refuses to accept the Goods within the aforementioned remedy period, CHERRY shall be entitled to terminate the Contract and demand for compensation from the Purchaser due to the breach of Contract. Where CHERRY demands for compensation from the Purchaser for breach of Contract, CHERRY is entitled to demand either compensation for the amount of actual damage (including any transportation and storage costs) incurred or, alternatively, a flat compensation amounting to thirty per cent (30 %) of the net purchase price of the Goods concerned, unless Buyer can establish a lower damage.

## 8 Retention of Title

- 8.1 CHERRY shall retain title to all the Goods delivered to the Purchaser until all payments due under the relevant Contract, including all ancillary claims and charges, have been fully settled by the Purchaser (the “**Retained Goods**”). If payment is made by check, promissory note or the like, title to the Goods shall not pass to the Purchaser until all open accounts of the Purchaser are settled and the respective amounts have been credited to CHERRY’s accounts. Where validity of the title of the Retained Goods is subject to any requirements or regulations governing form, in particular as to registration with the competent authority, according to the applicable laws of the Purchaser’s country, Purchaser shall fulfill these said requirements and/or regulations at its own expense in order to ensure the validity of the title of the Retained Goods. Where it is not reasonably viable or possible to secure the validity of the title of the Retained Goods, the Purchaser shall grant CHERRY an equivalent security.
- 8.2 Without prior written approval from CHERRY, the Purchaser shall not mortgage or grant any lien to the said Retained Goods, or to transfer the Retained Goods by way of security to a third party. In the event of seizure or confiscation or other intervention by a third party, the Purchaser shall notify CHERRY in writing without unreasonable delay and shall bear all the costs incurred in the elimination of the encroachment, in particular in trials of intervention. The Purchaser is only entitled to sell or combine the Retained Goods with other movable materials (e.g. in assembly or manufacture of a product) within the scope of its ordinary business. If CHERRY’s title to the Retained Goods perishes due to such processing, assembly or manufacture using the Retained Goods, the Purchaser shall grant CHERRY co-ownership in the new product processed, assembled or manufactured using the Retained Goods in relation to the value of such Retained Goods used, i.e. CHERRY is to be granted title to the new products as security where its title to such Retained Goods and/or Services is lost Goods and/or Services in the course of processing, assembly or manufacturing.
- 8.3 The Purchaser shall uphold CHERRY’s title in the Retained Goods and hereby assigns to CHERRY all claims the Purchaser may have against any third parties resulting from the sale of the Retained Goods and/or Services and/or products incorporating the Retained Goods and/or Services as components (the “**Purchaser’s Third Party Claims**”) in the amount of the respective purchase price plus ancillary cost, accrued interest and/or expenditures due and unpaid by the Purchaser. CHERRY hereby accepts such assignment. As far as current account transactions are concerned, such retention of title and assignment of claims shall serve as security for any debit balance in favor of CHERRY. Subject to CHERRY’s revocation, which will not be unreasonably made, the Purchaser may collect the Purchaser’s Third Party Claims to the extent that the Purchaser is not in default of any outstanding payment obligations under the relevant Contract. Upon CHERRY’s request, the Purchaser shall notify any third parties of the assignment of the Purchaser’s Third Party Claims and shall further provide CHERRY with all information and documentation necessary for the exercising of its rights against the said third parties. CHERRY shall be entitled to notify the said third parties of

the assignment once the Purchaser is in default of the respective payments and to collect all outstanding Purchaser's Third Party Claims.

- 8.4 In general, the Purchaser shall be obliged to deal with the Retained Goods with diligent care and to insure such Retained Goods against risks of fire, water damage and theft and all other risks which such Retained Goods and/or Services are customarily subject to under comprehensive general liability insurance policies. Where the Purchaser does not insure the Retained Goods, CHERRY shall, after giving the Purchaser reasonable notice, be entitled to insure the Retained Goods at the Purchaser's cost, advance the insurance premium and collect the relevant costs from the Purchaser as part of the claims stemming from the relevant Contract. The Purchaser hereby assigns to CHERRY all claims it may have against the insurance company to an amount that covers the purchase price due and unpaid plus ancillary cost, accrued interest and/or expenditures, if any. CHERRY hereby accepts such assignment.
- 8.5 CHERRY shall be entitled to retrieve the Retained Goods and/or Services from the Purchaser without terminating the respective Contract with the Purchaser. If an Event of Default in Payment as set out under Clause 4.5 above occurs, CHERRY shall be entitled to the repossession of the Retained Goods and/or Services and, excluding any and all rights of retention, Purchaser shall surrender such Retained Goods and/or Services. Without prejudice to the Purchaser's payment obligations CHERRY shall be entitled to earn the best possible profit from the repossessed Retained Goods and/or Services through private sale. Further, CHERRY shall be entitled to seek a court injunction to prevent Purchaser or third parties from selling, transferring or otherwise disposing of the Retained Goods and/or Services. All costs relating to the repossession of the Retained Goods and/or Services or to any action hereunder shall be borne by the Purchaser.

## 9 Inspection and Warranty

- 9.1 CHERRY shall provide a limited warranty for the Goods (the "**Warranty**") against defects in the same under reasonable use for a period of two (2) years from the date of delivery to the Purchaser (the "**Warranty Period**") under the terms set forth below.
- 9.2 This Warranty set out in Clause 9.1 does not cover, *inter alia*, any consumable items (such as batteries) supplied with the Goods (if any); any accessory products which do not constitute part of the Goods (such as mouse, port replicator, AC adapter and speaker); cosmetic damages; damage or loss to any software programs, data, or removable storage media; or damage due to (i) acts of God, accident, misuse, abuse, negligence, commercial use or modifications of the Goods; (2) improper operation or maintenance of the Goods; (3) connection to improper voltage supply; or (4) attempted repair by any third parties other than CHERRY.
- 9.3 CHERRY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE TO THE FULLEST EXTENT PERMITTED BY LAW.

- 9.4 The Purchaser shall, upon receipt of the Goods,
- (a) immediately inspect the Goods;
  - (b) Conduct a compatibility check with the hardware and software used by the Purchaser within ten (10) days from the date of receipt thereof; and
  - (c) notify CHERRY in writing of any alleged defects of the Goods within ten (10) days from the receipt thereof (the “**Notification Period**”).
- 9.5 The Warranty does not cover defects discovered and brought to CHERRY’s notice by the Purchaser after the expiration of the abovementioned Notification Period. If substantial defects in material or workmanship are of a hidden nature and consequently cannot be detected by Purchaser within the foregoing deadline upon due and diligent inspection of the Goods, such notification shall be made without undue delay from the detection thereof by the Purchaser.
- 9.6 Where a notice of alleged defects is given by the Purchaser within the Notification Period, upon confirmation by CHERRY that the Goods in question are truly defective (the “**Defective Goods**”), CHERRY may:
- (a) Replace the Defective Goods by other Goods at its own cost;
  - (b) Make good such defects in the Defective Goods; or
  - (c) Refund to the Purchaser the purchase price of the Defective Goods as stated in the relevant invoice.
- 9.7 Upon receipt of a notice of alleged defects from the Purchaser, CHERRY shall be entitled to request the Purchaser to return the allegedly defective shipment in whole or in part to CHERRY, or dispose thereof in accordance with the specific instructions from CHERRY. If a return of allegedly defective Goods is made by the Purchaser, the Purchaser shall bear the relevant cost of delivery to CHERRY and send to CHERRY the alleged defective Goods in their original condition together with a note in writing describing in detail the alleged defects and providing all necessary information regarding the relevant Contract including but not limited to delivery note code, customer number in writing. If CHERRY confirms that the Goods are defective, the delivery cost borne by the Purchaser will be reimbursed upon presentation of the relevant payment proof.
- 9.8 In case of repair or replacement, CHERRY shall own all the parts removed from the Defective Goods. Even if CHERRY repairs or replaces the Defective Goods, its original Warranty Period is not extended.
- 9.9 If a defect in the Defective Goods is considered to be reasonably material and
- (a) CHERRY refuses to repair or exchange the Defective Goods without justification;
  - (b) The defects in the Defective Goods cannot be made good after two (2) attempts of repair by CHERRY; or



- (c) There is an unreasonable delay in the replacement of the Defective Goods, the Purchaser shall be entitled to claim a reasonable reduction of the purchase price or to terminate the respective Contract. The Purchaser shall, however, not be entitled to terminate the Contract, if such defect is of minor significance.

9.10 The foregoing Warranty does not apply when the defect results from the inappropriate use or storage of the Goods by the Purchaser, or where it is determined by CHERRY that there is no fault with the Goods themselves.

## **10 Compatibility**

10.1 CHERRY is not obliged to check the compatibility of the Goods with the given specifications of the Purchaser and apart of that with the hardware and software used by the Purchaser. CHERRY shall not be held liable for defects caused by incompatible hardware and software or the lack of compatibility with the hardware and software used by the Purchaser, if the compatibility is not expressly agreed in writing or assured in separate product specifications by CHERRY.

## **11 Limitation of Liability**

11.1 In the case of slight negligence, CHERRY's liability, including that of its employees, workers, staff members, representatives, or in general any person employed by CHERRY in performance of its obligations including any other person entrusted with covenants and duties which relate to the Contract, shall be limited to product-specific foreseeable, typical, direct and immediate losses or damages. CHERRY shall further not be liable for any breach of non-essential obligations under the relevant Contract due to slight negligence. Any liability for consequential damages is excluded.

11.2 The above shall not impair CHERRY's liability under mandatory applicable laws which require CHERRY to accept extended liability or responsibility. Neither shall the above apply to personal injuries or loss of life of the Purchaser which is attributable to culpable acts or omissions by CHERRY.

11.3 Goods and/or Services Goods and/or Services CHERRY shall by no means be liable for materials, component parts, active ingredients, prescriptions, recipes and compounds, representations and warranties, freight specifications or manufacturing instructions provided by or obtained from Purchaser, unless expressly agreed upon otherwise in writing. CHERRY shall not be obliged to examine the foregoing items with regard to their conformity with product liability laws and/or any other mandatory applicable legal provisions. Purchaser shall fully indemnify and otherwise hold CHERRY harmless against any and all claims raised by third parties in this respect against CHERRY, including any losses, claims for injury and damage, costs and expenses or legal fees.

## **12 Intellectual Property Rights**

- 12.1 Purchaser hereby acknowledges that all know-how and intellectual property as well as the industrial property rights (the “**Rights**”) on or connected with the Goods are owned solely and exclusively by CHERRY. Transfer or use of the Rights by Purchaser other than objectively necessary for purposes of the Contract with CHERRY is only permitted if CHERRY expressly and specifically allows such use or transfer in advance in writing.
- 12.2 Purchaser hereby further acknowledges that all trademarks which are used on the Goods (the “**Trademarks**”) are owned solely and exclusively by CHERRY and that no right, title or interest is given to Purchaser to use such trademarks other than that specified in Clause 12.3 below.
- 12.3 CHERRY grants to Purchaser a non-exclusive right to use its Trademarks solely for the purpose of duly marking the Goods. Such use of the Trademarks shall by no means entitle Purchaser to continue to use the Trademarks after the termination of the Contract. The Purchaser shall immediately cease to use the Trademarks upon request by CHERRY, after termination of the Contract and after the clearance sale of all deliveries and stocks of the Goods still on hold, which Purchaser shall undertake as swiftly as objectively possible.
- 12.4 The Purchaser undertakes and warrants that neither the sale nor the use of the Goods by CHERRY will infringe any patent, trademark, copyright, registered design or other intellectual property rights whether or not similar to any of the foregoing.
- 12.5 The Purchaser shall indemnify CHERRY from all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged infringement as aforesaid in Clause 12.4, and at the Purchaser’s own expense will defend or (at our option) assist in the defence of any proceedings which may be brought in that connection, provided that the Purchaser shall be under no liability under Clause 12.4 or this Clause.

## **13 Waiver/Invalidity**

- 13.1 Failure of CHERRY to insist upon the strict performance of any provisions hereof shall not be deemed a waiver of its right and remedies.

## **14 Assignment**

- 14.1 The Purchaser shall not assign or transfer his rights and/or obligations stemming from the Contract with CHERRY to any third parties without CHERRY prior written consent thereto.

## **15 Governing Law, Place of Venue, Place of Performance and Severability**

- 15.1 The Contract between CHERRY and the Purchaser shall be governed exclusively by the laws of Singapore to the exclusion of all conflict of law alternatives and the terms of the CISG (UN Convention on Contracts for the International Sale of Goods and/or Services).

- 15.2 The exclusive place of venue for all legal disputes arising directly or indirectly from the Contract shall be Singapore. CHERRY shall be optionally entitled to bring action against Purchaser also at the courts competent at Purchaser's head or branch office, or at the court having jurisdiction at place of performance.
- 15.3 The exclusive place of performance for all obligations, covenants and deliveries for both Parties hereto shall be the head office CHERRY, as far as allowed under applicable mandatory statutory laws.
- 15.4 Should any provisions of these General Terms and of the further agreements made be or become invalid, this shall not affect the validity of the remaining provisions. In this case the Parties undertake to agree a legally permissible provision which corresponds to or comes closest to the desired commercial effect. This also applies to the filling of omissions.