

KROMEK STANDARD TERMS & CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

In these terms and conditions of sale, the following words shall have the following meanings:

“Business Day” means Monday to Friday excluding public holidays.

“Buyer” means the Person(s), Firm or Company who purchases the Products from the Seller;

“Confidential Information” means any confidential information relating to the Seller’s business, including, but not limited to, products, customer lists, pricing policies, operational methods, product development techniques or plans, methods of manufacture, technical processes, designs and design projects, inventions and research programs, trade secrets and know how, user manuals, systems documentation and other business affairs of the Seller.

“Contract” means the contract between the Seller and Buyer for the sale and purchase of the Products, incorporating these terms and conditions;

“Force Majeure Event” has the meaning set out in clause 15.1;

“Intellectual Property Rights” means patents, trademarks, service marks, registered designs, copyrights, database rights, design rights, confidential information, and any other similar rights recognised from time to time anywhere in the world in or associated with the Products

“Products or Goods” means any products agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them);

“Seller” means Kromek Limited (Company No: 4728565); NETPark, Thomas Wright Way, Sedgefield, TS21 3FD UK.

Together Seller and the buyer shall be referred to as “Parties”, individually as “Party”

“Specification” means the specification for the Products supplied by the Seller to the Buyer.

2. APPLICATION

- 2.1. These terms and conditions shall apply to any Contract for the sale of Products by the Seller and shall apply to the exclusion of any other terms and conditions referred to or issued to the Seller or implied by trade practice or custom or by course of dealing.
- 2.2. The Contract constitutes the entire agreement between the Parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Seller and any descriptions or illustrations contained in the Seller’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract or any other contract between the Seller and the Buyer for the sale of the Goods.
- 2.3. Any order or acceptance of a quotation for the Products by the Buyer shall be deemed to be an offer by the Buyer to purchase the Products, subject to these terms and conditions. An order shall only be deemed to be accepted by the Seller when acknowledged in writing by the Seller. Acceptance of Buyer’s order is expressly limited to and made conditional upon these Sale Terms and Conditions. Any Buyer terms and conditions which are in addition to or different from these Sale Terms and Conditions and which are not separately and expressly agreed to in writing by the Seller do not supersede these terms and conditions.
- 2.4. The Buyer assumes all responsibility for any higher-level assemblies incorporating Seller’s product, and Buyer will not (i) make any representations or warranties about Kromek product other than those Seller has specifically authorized in writing or, (ii) taken any action or make any commitment in Seller’s name without prior written authorization.

2.5. Sellers site of manufacture may differ depending upon Product being ordered. The site of manufacture will be stated within the quotation and will be subject to Sellers determination of site of manufacture.

3. CANCELLATION AND RETURNS

- 3.1. Orders for Products may not be cancelled by the Buyer after acceptance by the Seller without the Seller's prior written agreement. Cancellation of or changes to an order may be accepted on the basis that the Seller is reimbursed for all costs, damages, expenses and any loss of profit incurred as a result of such cancellation or change.
- 3.2. If, following agreement by the Seller, Products are returned by the Buyer, then the Buyer shall pay a restocking charge of 10% of the invoice value of the Products for the restocking of that Product, save where Products are returned due to the Products not complying with clause 6.1 where no charge shall be payable. All Products must be returned undamaged and in their original packaging.

4. CREDIT

- 4.1. Acceptance and delivery of orders by the Seller shall at all times be subject to the approval of the Buyer's credit worthiness by the Seller. The Seller may, at any time, require the Buyer to provide pre-payment for Products or such other form of security upon such terms and conditions as may be satisfactory to the Seller and the Seller may make performance of the Contract by it conditional on receiving such pre-payment or security.
- 4.2. If the Buyer is subject to any of the of the events listed clause 11.1.2 the Buyer is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken by it or any other person in respect of any of these circumstances, then the Seller may elect to cancel any unfulfilled order with no further commitment to compensate or supply the Buyer.

5. DELIVERY

- 5.1. Standard terms of delivery are Ex Works sellers site (incoterms@2010), unless otherwise stated in the Quotation. Site of Manufacture should be noted by Buyer.
- 5.2. Any dates quoted for delivery are subject to the normal conditions of carriage applicable to the mode of transport used. The Seller shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.3. The Seller may deliver the Products in part-shipments, which shall be invoiced and paid for separately. Each part-shipment shall constitute a separate Contract. Any delay in delivery or defect in a part-shipment shall not entitle the Buyer to cancel any other part-shipment.
- 5.4. Buyer may reschedule any portion of an order from Seller on a one-time basis, by not more than sixty (60) days, provided agreement has been given in writing by Seller.

6. WARRANTY

- 6.1. The Seller warrants that on delivery, and for period of twelve [12] months from the date of delivery ("**Warranty Period**"), the Products, with exception to the prototypes shall conform in all material respects with their applicable Specification, with the exception to circuit board assembly components, in which case the manufacturer warranty shall apply as agreed to per testing and product specifications and/or drawings and/or data sheets. Prototypes are sold without warranty see clause 6.8.
- 6.2. Subject to clause 6.3 and 6.4, if:
 - 6.2.1. the Buyer gives notice in writing to the Seller during the Warranty Period within a reasonable time of discovery (see Clause 6.4) that some or all of the Products do not comply with the warranty set out in clause 6.1; and
 - 6.2.2. the Seller is given a reasonable opportunity of examining such Products; and

- 6.2.3. the Buyer (if asked to do so by the Seller) returns such Products to the Seller's place of business at the Buyer's cost, the Seller shall, at Seller's option, repair, replace, update such Products or provide a credit.
- 6.2.4. If product is returned and credit or replacement given, then the returned item(s) will become the property of Seller.
- 6.3. The Seller shall not be liable for Product failure to comply with the warranty set out in Clause 6.1 if:
 - 6.3.1. the Buyer makes any further use of such Products after giving notice in accordance with Clause 6.2; or
 - 6.3.2. the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or good trade practice; or
 - 6.3.3. the Buyer alters or repairs such Products without the written consent of the Seller; or
 - 6.3.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal storage or working conditions, accident, abuse, misuse, negligence, modification, improper handling, next level assembly processing, maintenance, removal or alteration of labels by Buyer or third party.
 - 6.3.5. If the Product are determined to be conforming or not covered under warranty, Seller will notify Buyer (i) Seller will return the product to Buyer at Buyer's expense including all freight and other charges, (ii) Upon joint agreement between Seller and Buyer, buyer will replace the Product at the quoted price for the Product or repair the Product at a quoted price by Seller.
- 6.4. The Buyer must give the Seller written notice of any defect in the Products:
 - 6.4.1. within 7 days of delivery, if the defect was apparent on delivery; or
 - 6.4.2. within 48 hours of becoming aware of any latent defect which was not apparent on delivery.
- 6.5. Except as provided in this clause 6, the Seller shall have no liability to the Buyer in respect of the Products' failure to comply with the warranty set out in clause 6.1.
- 6.6. Except as set out in these terms and conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.7. Warranty is not transferable, and Seller does not warrant (i) uninterrupted or, error free operation or, functionality of the Product, (ii) that Seller will correct all defects or, (iii) services. No course of dealing, course of performance, usage of trade, or description of product or, service shall be deemed to establish a warranty, either expressed or implied.
- 6.8. All prototypes are provided on an "as is" basis without warranty or Indemnification of any kind by Seller.
- 6.9. These terms and conditions shall apply to any repaired or replacement Products supplied by the Seller.
- 6.10. The foregoing warranties as the Buyer's exclusive warranties and replace all other warranties or terms, expressed or implied, including warranty or non-infringement and the implied warranty or terms of merchantable, fitness or use for a particular purpose and satisfactory quality.

7. PRICE

- 7.1. Unless agreed otherwise in writing by the Seller or as set out in the Seller's quotation, the price of each of the Products sold shall be as set out in the Seller's written acceptance of a Buyer's order.
- 7.2. Quotations are valid for sixty 60 days unless otherwise specified and may be revised or withdrawn at any time before acceptance by the Seller.
- 7.3. The price of the Products does not include value added tax or other applicable taxes or duties, or any costs for transportation, special packaging, tariffs, permits and special inspections. Any such costs or taxes will be added to the invoice for the Products and paid by the Buyer.
- 7.4. Seller shall have the right to revise prices in the event of (i) market price changes for components, parts or raw materials and (ii) Changes in specification or (iii) changes in volume upon which such prices were quoted.

8. RISK AND TITLE

- 8.1. Risk but not Title passes from the Seller to the Buyer on delivery in accordance with Clause 5 above. Any Products returned from the Buyer's premises to the Seller's premises in accordance with these terms and conditions will be returned at the Buyer's risk
- 8.2. Title to the Products shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
 - 8.2.1 the Products; and any other products or services that the Seller has supplied to the Buyer.

8.3. Until title to the Products has passed to the Buyer, the Buyer shall:

- 8.3.1. hold the Products on a fiduciary basis as the Seller's bailee;
- 8.3.2. store the Products separately from all other Products held by the Buyer so that they remain readily identifiable as the Seller's property;
- 8.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- 8.3.4. maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.3.5. notify the Seller immediately if it becomes subject to any of the events listed in clause 11.1.2 the Buyer is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken by it or any other person in respect of any of these circumstances.; and
- 8.3.6. give the Seller such information relating to the Products as the Seller may require from time to time, but the Buyer may resell or use the Products in the ordinary course of its business.

8.4 If before title to the Products passes to the Buyer and the Buyer becomes subject to any of the events listed in clause 11.1.2 the Buyer is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken by it or any other person in respect of any of these circumstances, or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Products and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third Party where the Products are stored to recover them.

9. Changes

- 9.1. In the event that Seller's ability to supply product becomes constrained, Seller may, as is deemed reasonable by Seller, (i) reduce quantities or, (ii) delay shipments which will be communicated in writing to Buyer at the earliest possible time.
- 9.2. Seller retains the right to discontinue or proceed to end of life of any product with advance notice, unless stated otherwise in an agreed separate contract.
- 9.3. Seller will have the right to change the Sellers production process, or Product without the consent of the Buyer, unless otherwise agreed to in a separate contract. Buyer will be notified of any changes in advance of the change where product is on order.
- 9.4. Any Buyer initiated and agreed engineering changes will be subject to an administration fee plus costs relating to the implementation of the change. Pricing for the new product will be quoted for accordingly.

10. TERMS OF PAYMENT

- 10.1. The Seller shall invoice the Buyer for the Products on or at any time after completion of delivery or part delivery of the Products.
- 10.2. Invoices are due and payable by the Buyer within thirty (30) days from date of invoice in Pounds Sterling unless otherwise agreed in writing by the Seller. Time for payment is of the essence.
- 10.3. If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment ("**due date**"), then the Buyer shall pay interest on the overdue amount at the rate of 2% per month above HSBC plc's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount. The Seller reserves the right to claim for interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 10.4. The Seller reserves the right to change the payment terms set out in clause 10.2. if, in the Seller's opinion, the financial condition or previous payment record of the Buyer so warrants.
- 10.5. Any payments for the Products will become due upon the date of termination of the Contract.

- 10.6. The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Seller may, at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

11. TERMINATION

- 11.1. The Seller shall have the right (without limiting any other right or remedy available to it) to terminate the Contract immediately if:
- 11.1.1. the Buyer is in breach of the Contract and fails to remedy such breach within fourteen [14] days of the Seller giving the Buyer notice to do so; or
 - 11.1.2. the Buyer is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken by it or any other person in respect of any of these circumstances, or has a substantial portion of its assets assigned, conveyed or sold for the benefit of creditors, provided in any such case that the proceedings are not dismissed within 60 days of filing.

12. LIMITATION OF LIABILITY

- 12.1. Nothing in these terms and conditions shall limit or exclude the Seller's liability for:
- 12.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 12.1.2. fraud or fraudulent misrepresentation; or
 - 12.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 12.1.4. any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 12.2. Subject to Clause 11.1:
- 12.2.1. the Seller shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and
 - 12.2.2. the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the total value of the Contract.

13. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

- 13.1. The Buyer acknowledges and agrees that the Intellectual Property Rights are the Seller's property and nothing in the Contract shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the Intellectual Property Rights.
- 13.2. The Buyer agrees not to use Confidential Information for any purpose other than the purpose for which it is supplied under the Contract and agrees not to divulge Confidential Information to any of its employees who do not need to know it, and to prevent its disclosure to or access by any third Party without the prior written consent of the Seller except to its professional advisers or as may be required by law or any legal or regulatory authority. The Buyer shall use a reasonable degree of care to protect the Confidential Information which in any event will not be less than the same degree of care which it uses to protect its own confidential information and to keep and ensure its employees and agents keep any and all such information confidential.
- 13.3. Seller shall have no obligation regarding any claim based on any of the following:
- 13.3.1. Anything Buyer provides which is incorporated in to a product or service (including, but not limited to (i) specification (ii) designs (iii) documentation, (iv) reports (v) data;
 - 13.3.2. Customer modification of a product or service
 - 13.3.3. The combination, operation, use of a product/service with any product, data, or apparatus that Seller did not provide, or;
 - 13.3.4. Infringement by a non-Seller product alone, as opposed to its combination with products Seller provides to Buyer as a system.

- 13.3.5. If a third party claims that a product or service Buyer provides to that customer infringes on that Party's patent or copyright, and such claim is based upon any of the factors which constitute grounds for Seller to have no obligation to indemnify customer pursuant to the provisions of Section 12.0,
- 13.3.6. Buyer will defend Seller against that claim at Buyer's expense and pay all costs, damages, and attorney's fees that a court finally awards.
- 13.3.7. No license, immunity or other right is granted herein by either Party to the other Party, whether directly or by implication, estoppel, or otherwise, with respect to any patent, trademark, copyright, mask work, trade secret, or other intellectual property rights.
- 13.3.8. Nothing in this agreement grants either party any rights to use the other Party's trademarks or trade names, directly or indirectly, in connection with any product, service, promotion, publication or publicly without prior written approval of the trademark owner.

14. Export Regulations

- 14.1. Regardless of any disclosure made by Buyer to Seller of an ultimate destination of Products, Buyer will not export either directly or indirectly any Product, or any system incorporating said Product, without first obtaining all required licenses and permits from all relevant U.S. or UK Government agencies and departments where applicable. Buyer must disclose to Seller in writing any intention to export any Products and ultimate destination at time of order. In addition, Buyer: (i) recognizes that Seller may not know or have reason to know the intended function of the Buyer's products and technical data and must rely on Buyer to provide correct information for export and import of Buyer's products and technical data. (ii) agrees to provide all information necessary to determine all relevant export authorizations and to export and import Products and technical data, including as applicable the Export Classification Control Number (ECCN) and subheadings. (iii) agrees to assist with obtaining any required licenses and authorizations for export and import of products and technical data and with making any required filings. Buyer shall be fully responsible for the correctness of information provided by Buyer and any use of it to comply with applicable regulations.

15. FORCE MAJEURE

- 15.1. Neither Party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond a Party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third Party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

16. GENERAL

16.1. Assignment and subcontracting.

- 16.1.1. The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.1.2. The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

16.2. Notices.

- 16.2.1. Any notice or other communication given to a Party under or in connection with the Contract shall be in, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

- 16.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 16.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.3. Severance.

- 16.3.1. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.3.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.4. Waiver.

- 16.4.1. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.5. Third Party rights.

- 16.5.1. A person who is not a Party to the Contract shall not have any rights under or in connection with it.

16.6. Variation.

- 16.6.1. Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed. by the Seller

16.7. Governing law and jurisdiction.

- 16.7.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.