

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. 'Seller' means Avnet TS Ireland Limited trading as Avnet Technology Solutions Ireland, Registered in Ireland No. 176906.
- 1.2. 'Customer' means any person who has agreed to purchase Product from Seller.
- 1.3. 'Contract' means any agreement between Seller and a Customer for the supply of Product by Seller, including without prejudice to the generality of the foregoing, a contract created in the manner described in paragraph 2.2 below.
- 1.4. 'Hardware' means the hardware component of Product, including all ancillary equipment, supplies and documentation.
- 1.5. 'Product' means any configuration of Hardware and/or Software and/or Consultancy and/or Training and/or Service which the Customer agrees to buy from Seller.
- 1.6. 'Terms and Conditions' means the terms and conditions set out herein in Clauses 1 to 12 inclusive.
- 1.7. 'Site' means the site(s) to or at which any Product is delivered.
- 1.8. 'Software' means any operating system, utility or applications software in machine readable, object, printed or interpreted form and either incorporated with Hardware or separately supplied, including related documentation.

2. GENERAL CONDITIONS

- 2.1. The Terms and Conditions shall apply to all Contracts.
- 2.2. Where Seller has provided the Customer with a written 'Quotation' the same shall constitute an invitation to treat. All orders placed with Seller by the Customer for Product shall constitute an offer to Seller and no Contract shall come into being until accepted by Seller. Seller's acceptance of the Customer's order shall be denoted by Seller's issue of a written 'Sales Order'.
- 2.3. Each delivery of Product under the Contract shall be deemed to constitute a separate enforceable Contract to which the terms and Conditions and conditions shall apply.
- 2.4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred upon such party by the Terms and Conditions or by law, shall operate as a waiver of such power or right, or of any other power or right on any subsequent occasion.
- 2.5. No Contract or any right there under shall be transferable or assignable by either party without the prior written consent of the other party except that any assignment by Seller to its parent company Avnet Inc. or to any company directly or indirectly controlled by its parent company shall not require the prior consent of the Customer.
- 2.6. Any notice to be given pursuant to these Terms and Conditions by one party to the other must be in writing. Notices sent by post or fax shall be sent to the addresses/fax numbers of the parties set out in the Sales Order or to any other address notified in writing by one party to the other for the purposes of receiving notices after the Contract date.
- 2.7. In the event that any of the Terms and Conditions or any part of any Term or Condition is judged illegal or unenforceable for any reason the continuation in force of the remainder of the Terms and Conditions shall not be prejudiced.
- 2.8. If either party (a) fails to perform any of its obligations under the Terms and Conditions and such failure continues for a period of 28 days after notice thereof, or (b) ceases to carry on business or a substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt, or enters into liquidation whether compulsory or voluntary (other than for the purposes of amalgamation or reconstruction), or makes an arrangement with its creditors or petitions for an administration order, or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts as they fall due, then

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without prejudice to any other right or remedies available to it the other party shall have the right to suspend or terminate the Contract forthwith.

2.9. Except as set out in the Terms and Conditions there are no warranties, terms, conditions, guarantees or representations affecting the Contract whether express or implied by statute or purported to apply by a Customer or otherwise, whether written or oral provided that nothing in the Terms or Conditions shall restrict or exclude liability for death or personal injury caused by negligence of Seller or affect the statutory rights of a Customer dealing as a "consumer" within the meaning of the Sale of Goods and Supply of Services Act 1980 as amended from time to time.

2.10. The Contract shall be governed and construed in accordance with the Laws of the Republic of Ireland and the parties shall submit to the exclusive jurisdiction of the Courts of the Republic of Ireland unless otherwise determined by Seller at its own absolute discretion.

3. PRODUCT

3.1. The Quantity and/or description of Product shall be as set out in Seller's Sales Order.

4. DELIVERY

4.1. The Customer shall make the Site available for inspection by appropriate Seller staff before the scheduled delivery date if so required by Seller. Unless otherwise specified by the Customer, delivery will be made to or at the Site shown in the Sales Order.

4.2. The Customer shall furnish the necessary labour for taking any Hardware into its designated operating point, unpacking it and placing it in the desired location.

4.3. Delivery date(s) referred to in any Quotation, Sales Order or elsewhere are approximate only and not of any contractual effect. Whilst Seller will use all reasonable endeavours to meet any scheduled delivery date, it shall not have any liability for loss or damage (including loss of use (total or partial), loss of contract or loss of profits) incurred by the Customer as a result of any failure to deliver on any particular date or dates.

4.4. If the Customer refuses or fails to take delivery of any Hardware or Software, or requires or fails to take up any training, consultancy or other services tendered in accordance with the Contract delivery shall nevertheless be deemed to have taken place for the purposes of Seller's rights to payment and Seller shall be entitled to store the Product at the Customer's risk and expense, including all transportation charges.

4.5. Delivery of the goods to the carrier shall constitute delivery to the customer, and all risk shall thereupon pass to the customer. If the Customer wishes to make any claims for shortages or damaged Product full particulars must be notified to Seller within 7 days of delivery.

5. INSTALLATION/TRAINING

5.1. Where Installation and/or Training are not included in the purchase price and not ordered by the Customer, the Customer will be solely responsible for the same and in such event Seller disclaims any liability in connection therewith.

6. ACCEPTANCE

6.1. Acceptance by the Customer of Hardware/Software will be deemed to take place on delivery of Product to the Site or if Seller is installing the Product at the site then Acceptance will be deemed to take place when Seller demonstrates that the applicable diagnostic and/or verification programmes established by Seller in respect of the Product work properly. If Seller's demonstration of the test procedures and/or programmes at the Site is delayed for more than 7 working days other than through any fault of Seller, the Product will be deemed accepted by the Customer.

7. HARDWARE WARRANTIES

7.1. Seller warrants that it has good title to all Hardware supplied to the Customer hereunder.

7.2. Seller gives no warranty in relation to Hardware and the Customer must rely solely on the warranties supplied by the manufacturer. Seller will give the Customer the manufacturer's warranty documentation on delivery of product.

8. SOFTWARE COPYRIGHT

8.1. Seller gives no warranty in relation to Software and the Customer must rely solely on the warranties supplied by the manufacturer. Seller will give the Customer the manufacturer's warranty documentation on delivery of product.

8.2. All Software and related documentation is supplied to the Customer under the terms and conditions of the applicable proprietary License Agreement (whether the same has been signed and/or returned to the Licensor or not) for use on the Hardware specified therein. Title to Software does not transfer to the Customer under any circumstances. It is the sole responsibility of the Customer to comply with all of the terms and conditions of the said License and the Customer is hereby notified that any failure to comply with such terms and conditions may result in the revocation of the License.

8.3. The Customer acknowledges that any Software supplied by Seller has not been prepared to meet the Customer's individual requirements and it is the Customer's responsibility to ensure that the facilities and functions of the Software meet the Customer's requirements.

9. PRICES AND PAYMENT TERMS

9.1. Prices for Product include any import duty in effect at the time of Sales Order Confirmation but are exclusive of Value Added Tax which shall be paid by the Customer.

9.2. Any costs incurred by Seller in connection with the movement of Product to the site shall be payable by the Customer.

9.3. Subject to any specific payment terms specified in the Contract, payment is due to Seller on or before delivery, against invoice, except where the Customer has established a credit arrangement satisfactory to Seller as set out in the Sales Order. Notwithstanding any credit arrangement, if Seller becomes entitled to terminate the Contract pursuant to Clause 2.8 above any sums then due to Seller shall immediately become payable in full.

9.4. Payments are deemed to be received when cleared funds are in Seller's hands. All payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment at 4% per annum above the AA rate for the time being of Seller's bankers. Said interest shall accrue on a daily basis before as well as after any judgement and is payable on demand. Notwithstanding this condition, Seller may, at its option and without prejudice to any other remedy at any time after payment has become due, suspend any further deliveries due under the Contract and enter in or upon the Customer's premises and take possession of Product listed on the relevant Sales Order Confirmation. These rights shall continue until payment in full is received by Seller.

10. RETENTION OF TITLE

10.1. In spite of delivery having been made, property in the Product shall not pass from Seller to the Customer until the Customer has paid Seller for same in full including all taxes and no other sums are due to Seller in respect thereof. The Customer shall ensure that Product is not modified, neglected or misused in any way or moved without Seller's prior written consent until such time as the Customer has paid Seller in full.

11. RETURNS AND CANCELLATIONS

11.1. The Customer does not have the right to cancel or amend an order without the prior written consent of the Seller.

11.2. No return of goods shall be accepted by the Seller without a Return Material Authorisation ("RMA"), which may be issued by the Seller or the Seller's supplier in their sole discretion. Returned goods must be in original manufacturer's shipping cartons complete with all packing materials. All goods for return shall be returned freight prepaid in the manner specified in the RMA.

11.3. Any defective Product will be subject to appropriate manufacturer warranty offering.

12. INDEMNITIES AND LIMIT OF LIABILITY

12.1. The Customer hereby declares that it has accepted the Terms and Conditions in the knowledge that the liability of Seller hereunder is limited and that the prices and charges payable hereunder have been calculated accordingly.

12.2. Seller will indemnify the Customer for direct damage to property caused by defective workmanship and/or materials (other than defective Product) or by the negligence of its employees in connection with the performance of their duties hereunder provided always that the total liability of Seller in such circumstances shall be limited to €500,000 for any one event or connected series of events.

12.3. Subject to 12.2 above, Seller's liability for any breach of this contract shall be limited to a refund of the purchase price and/or Licence fee paid by the Customer after Product supplied has been returned to Seller. Seller shall not be liable for any other loss direct indirect or consequential howsoever arising and whether under this contract or in tort.

12.4. The Customer shall indemnify Seller for any costs fines or expenses incurred by Seller as a result of connection of any Product to apparatus or any other telecommunications utility company in breach of any statutory regulation through no fault of Seller.