

**TERMS AND CONDITIONS OF SALE (T&C's)**  
**ACCESS GRAPHICS B.V.**  
an AVNET TECHNOLOGY SOLUTIONS Company

**1. GENERAL**

- (a) These T&C's shall apply to any order confirmed by **Access Graphics B.V Doctor Willem Dreesweg 6-8, 1185 VB Amstelveen, The Netherlands** (the "Seller") for each individual sale or service agreement.
- (b) In the event of conflict between these T&C's and any particular conditions in the purchase order of, or any other document with, a particular Customer, these T&C's shall prevail unless otherwise expressly agreed to in writing between the Seller and the Customer, in which case the remainder of these T&C's shall remain in force. Customer T&C's are not applicable.
- (c) These T&C's shall supersede all earlier T&C's of the Seller.
- (d) If any of these T&C's are unenforceable, they shall not affect the validity or enforceability of the remainder of such term and condition or these T&C's as a whole.
- (e) All changes to these T&C's have to be agreed in writing. The same applies to this variation clause.

**2. QUOTES & ORDERS**

- (a) Any quote made by the Seller shall be non-binding and deemed to be an invitation to tender, and the parties will only enter into a contractual relationship in accordance with the procedure described herein. Customer orders are binding upon the Customer.
- (b) All orders are subject to approval by the Seller and the contract shall be deemed to be entered into either when the Seller sends a written order confirmation, or when the Seller sends the goods or performs the services ordered. Errors in the Seller's order confirmation have to be notified in writing to the Seller and such notice received by the Seller within three days as of receipt of the order confirmation. After this three-day period, the information mentioned on the order confirmation shall be considered to be correct.
- (c) All orders are subject to credit approval by the Seller, which may, at its sole discretion at any time, change the Customer's credit and payment terms. If the Seller believes that the Customer's ability to make payments may be impaired, the Seller may suspend delivery until the Customer has provided a bank guarantee under article 8.
- (d) The Customer agrees to send to the Seller a written order of any oral orders duly marked with any confirmation reference provided to properly identify the Customer and the goods ordered, otherwise the Seller reserves the right not to process the order.
- (e) In case the Seller processes an oral order that has not been confirmed by the Customer, the order is nevertheless binding upon the Customer.

**3. SPECIFIC CUSTOMER'S OBLIGATIONS**

- (a) The Customer is responsible for providing Seller with accurate information prior to and during the existence of this agreement (including, but not limited to, shipping address, bank account numbers, the company name, financials) and for specifying in its order any specific requirements with regard to merchantability of the goods or services or their suitability or fitness for any particular purpose or use.
- (b) The Customer shall be responsible for the safeguarding of all data and has to take appropriate precautions against any loss of data.
- (c) The Customer shall provide the Seller with its financial data as reasonably requested by the Seller for credit checks.
- (d) The Customer assumes full responsibility with regard to any license agreement affected by, involved in or related to the use of the goods purchased or the services performed hereunder and shall comply with all license terms provided by the manufacturer of the goods.
- (e) The Customer will comply with all local, E.U. and U.S.A. import and export laws and regulations with respect to the goods or the services performed.
- (f) The Customer shall conform with the applicable manufacturer's guidelines for the goods and for any value-added work performed by the Seller.

**4. PRODUCT AND SERVICE DESCRIPTION**

- (a) Upon delivery to Customer, the goods purchased hereunder shall conform with the applicable manufacturer's specifications for such goods and any value-added work performed by the Seller on such goods shall conform to the Customer's specifications relating to such work, to the extent they have been clearly communicated as required under article 3(a) and accepted by the Seller.
- (b) Unless specified otherwise, goods sold by the Seller are not designed, intended or authorised for use in life support, life sustaining, nuclear, military or other applications in which the failure of such goods could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If the Customer uses or sells the goods for use in any such applications: (i) the Customer acknowledges that such use or sale is at the Customer's sole risk; (ii) the Customer agrees that the Seller and the manufacturer of the goods are not liable, in whole or in part, for any claim or damage arising from such use; and (iii) the Customer agrees to indemnify, defend and hold the Seller and the manufacturer of the goods harmless from and against any and all claims, damage, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.
- (c) The Seller shall not be responsible for adapting or modifying any goods to conform to statutory requirements not in force at the time of the acceptance or order, except as specifically requested by the Customer in accordance with article 3(a) and accepted by the Seller.
- (d) The Customer is aware that product specifications may change over the course of time and shall inform itself about the future specifications and availability of any goods and services. The Seller cannot guarantee the ongoing supply of goods of a certain specification in the future.
- (e) All product descriptions, adverts and any other public information regarding goods supplied are not binding unless specifically agreed in the order confirmation.
- (f) When the Seller provides its own services to the Customer, all services need to be specified in detail and confirmed by the Seller. Unless specified otherwise, when the Seller provides services, the Customer is always the manufacturer of the goods and the Seller acts on behalf of and on the instructions of the Customer only. No services provided by the Seller include the application for certain certificates or registrations (for example, but not limited to, CE, WEEE), labelling or branding. All services the Seller provides free of charge are subject to verification by the Customer and shall not be binding on the Seller. Paid services are always subject to due cooperation by the Customer and its support. Unless agreed in writing, no service constitutes a right of the Customer to obtain a certain result.

**5. DELIVERY AND TITLE**

- (a) The Customer acknowledges that delivery dates provided by the Seller are estimates or indications only, and non-binding as delivery is conditional upon the Seller receiving the supplies of the goods from the Seller's suppliers.
- (b) Delivery of the goods to the carrier shall constitute delivery to the Customer, and all risk shall thereupon pass to the Customer.
- (c) The Seller shall be entitled to make partial deliveries or deliveries by instalments. Each such delivery shall be construed as a separate contract and these T&C's shall apply to each such delivery.
- (d) The Customer shall inspect all delivered goods on delivery and inform the Seller about all damage, faults, wrong- and short-deliveries in writing without delay, but no later than one week after delivery, after which the goods are deemed to be irrevocably accepted unless it there was a hidden defect or fault or wrong delivery that could not be detected upon due inspection. In the case where the Customer detects a hidden defect or fault later on, the Customer shall notify the Seller immediately upon detection. In the case where the Seller delivers goods upon request of the Customer to a third party, the Customer is responsible for ensuring that the third party acts accordingly.
- (e) Title to the goods will only pass upon receipt of full payment of the goods to the Seller of both the principal amount and any interest and indemnities that may be due. The Customer shall store any such goods in an area away from

other goods of the Customer and shall clearly mark them as being the property of the Seller.

- (f) The Customer shall be entitled to sell the goods to third parties in the normal course of business, provided that the Customer assigns all its rights vis-à-vis this third party buyer to the Seller. The Seller accepts the assignment. The Seller grants the Customer the revocable right to invoice the third party and receive the payments from the third party on behalf of the Seller unless the Customer fails to pay the Seller in time or the Seller believes that the Customer's ability to make payments may be impaired. Notwithstanding, the Customer will be obliged to pay all amounts due to the Seller under the contract.
- (g) In case of direct delivery to a customer of the Customer, or in the case of delivery by the Customer before full payment to the Seller, the Customer shall pass on the obligations contained in this Article 5 to its customer.

## 6. PRICE

- (a) Unless otherwise stated, any prices quoted by the Seller are:
  - (i) exclusive of value-added tax and any other taxes;
  - (ii) exclusive of carriage, customs, packing and insurance;
  - (iii) exclusive of any release certificates, (for example, CE certificates if the Seller performs Integration services);and the Seller shall have the right to charge extra in respect of the above items.
- (b) Prices shall be as quoted by the Seller and shall be applicable for the period specified in the Seller's quote. If no period is specified, prices shall not be increased by the Seller for thirty (30) days. Notwithstanding the foregoing, prices shall be subject to an increase in the event of an increase in the Seller's costs, including, but not limited to, currency, deliveries by third parties, other circumstances beyond the Seller's reasonable control or any breach by the Customer leading to higher costs for the Seller. The Seller will notify the new prices to the Customer in writing and invite the Customer to accept such prices. If parties cannot reach an agreement on the new prices within a reasonable timeframe, the Seller may terminate the agreement and cancel pending orders.
- (c) Seller can reasonably increase prices and also charge higher prices for the goods that have been invoiced already if the Customer does not order the quantities that formed the basis for the price quotation.

## 7. PAYMENT

- (a) An invoice is payable without offset or deduction upon receipt and shall be paid within 30 days from the date of the invoice by means of bank wire unless the Seller has set other payment terms. Payment by means of check or bill of exchange will only be accepted if agreed to in writing by the Seller. Payment shall be entirely at the expense of the Customer (including, but not limited to, wire transfer expenses).
- (b) The Seller reserves the right to suspend deliveries if payment is not received in accordance with article 7(a), in accordance with any alternative terms of payment agreed in writing or if there are indications that the financial situation of the customer is deteriorating.
- (c) The Customer shall pay interest on any amounts unpaid on their due date, calculated at the interest rate of 10% per annum, due on a monthly basis. Moreover, the Seller shall be entitled to claim reasonable compensation for all relevant recovery costs, without prejudice, however, to the right of the Seller to claim compensation for all damage incurred.
- (d) No cash or other discount is allowed unless agreed in writing.
- (e) All invoices immediately and without further notice become due when the Customer is in default of payment or otherwise in breach of any provision of these T&C's.
- (f) The Customer is not entitled to exercise any statutory right of retention, to withhold performance in respect of claims or to off-set any amounts unless these rights are based on court decision or the counterclaim has been acknowledged in writing by the Seller.

## 8. BANK GUARANTEE

At the Seller's first request, the Customer shall submit to the Seller a bank guarantee with an established European credit institution or other security instrument reasonably selected by the

Seller with respect to its payment obligations. The Seller shall be entitled to request such guarantee at all times, both before any delivery has taken place, as well as during and after delivery. As long as the Customer has not submitted a bank guarantee after request by the Seller, the Seller may suspend any (further) delivery without any liability to the Customer or any third party.

## 9. DRAWINGS ETC.

- (a) All drawings, descriptive weights, dimensions and the descriptions and illustrations contained in the sales literature, price lists, estimates of performance or other specifications provided by the Seller are approximate only and shall not form part of the contract or constitute a guarantee. In addition, drawings, technical documents issued either before or after the conclusion of the contract for the use or information of the Customer and any such other information as may be supplied to the Customer by the Seller, including specifications, shall not be copied, reproduced or communicated to any third party without the Seller's prior written consent.
- (b) The Seller can change the specifications of the goods from time to time.

## 10. LIMITED WARRANTY

- (a) If it is found, on due examination by the Customer, that the goods do not meet manufacturer's specifications, or with respect to value-added work by the Seller, it does not meet the Customer's specifications, or for paid services provided by the Seller does not meet the average quality on the market, the Seller shall be liable under the warranty, which is limited to the Seller (i) refunding the Customer at market price for such goods or services (without interest and in any case, limited to the purchase or service price), (ii) repairing such goods, or (iii) replacing such goods or performing the service; provided, however, that in all cases, the Customer provides acceptable evidence of the defects and that defective goods are returned to the Seller. Repair and replacement of goods does not prolong the warranty set out in article 10 (c).
- (b) The Customer cannot claim any warranty rights if it is in default of its obligations set out in article 5 (d). The Customer is also obliged to notify the Seller immediately but in any event, no later than one week after the Customer has obtained knowledge of any fault or defect from its customer or any end user.
- (c) In any event, each warranty expires 12 months after delivery by the Seller to the Customer.
- (d) The Seller shall transfer to the Customer whatever transferable warranties and indemnities the Seller receives from its vendor(s), including any transferable warranties and indemnities respecting patent infringement, in which case no separate warranty as defined under article 10 (a) will be granted by the Seller.

## 11. RETURNED GOODS AND CANCELLATIONS

- (a) No return of goods shall be accepted by the Seller without a Return Material Authorisation ("RMA"), which may be issued by the Seller. A request to return goods because of visible defects must be made within one week of receipt. A request to return goods because of hidden defects must be made within one week of discovery and in any case, no later than 12 months as of receipt thereof. The Customer shall lose the right to return goods when it fails to send the requests in a timely manner as set out in this paragraph. 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. If goods are returned on the ground that they are defective, a complete description of the nature of the defect, as well as the date and the circumstances of its discovery must be included with the returned goods. If the Seller consents to a return or cancellation of goods that are not subject to warranty claims, it reserves the right to invoice return or cancellation charges, including those charges specified in the RMA.
- (b) In the case where the Customer returns goods claiming warranty rights and these goods are found to be fault-free, the Customer shall bear all the costs related to the unjustified claiming of warranty rights, including transport, handling and costs for inspection.

## 12. EXCLUSION OF LIABILITY

- (a) The Seller shall be liable without limitation for (i) its own wilful default or gross negligence, (ii) its own fraudulent acts, (iii) any damage resulting from the death or personal injury caused by the negligence of the Seller or its employees or agents, or (iv) any damages based on other mandatory laws that do not allow the Seller's liability to be limited.
- (b) Seller's liability shall be limited to direct loss and shall not include indirect or consequential loss. Hence, the following shall be excluded, among others: loss of income, loss of turnover, loss by closure, increased production or operational costs, loss of customer base and loss of reputation. Any amount recovered by the Customer from the Seller for any claim shall not exceed the Customer's purchase price for the goods or services giving rise to such claim, irrespective of the nature of the claim, whether in contract, tort, warranty or otherwise.
- (c) The Seller shall not be liable for the loss of or damage to software programs during repair or upgrade of any goods, whether or not the same are under warranty.
- (d) The exclusion of liability described in this article 12 shall also apply to the Seller's employees and all other persons acting on its behalf.

## 13. FRUSTRATION ETC. (FORCE MAJEURE)

- (a) If the Seller is prevented at any time from performing any contractual obligation, or if any loss, damage, injury or delay in delivery is occasioned by or due to any cause beyond the Seller's control including (but without prejudice to the generality of the foregoing expression), the commission of any criminal act, shortage of goods, act of war (whether declared or not), civil commotion, accident, strikes or lock-outs, man-made disasters, Acts of God, or any restriction imposed by any local municipal or government authority (including Customs Authorities), whether national or foreign, the Seller's time for performance of delivery and any other obligation shall be suspended for as long as the cause of the non-performance, loss, damage, injury or delay is outstanding or, provided that the *force majeure* continues for a period of 4 weeks or longer, the Seller may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to the Customer.
- (b) If the contract is terminated in whole or in part in such circumstances, the Customer shall be liable to pay the Seller for any goods delivered or services rendered under each or any contract on a pro-rata basis.

## 14. INTELLECTUAL PROPERTY RIGHTS & SOFTWARE

- (a) The Customer acknowledges that rights in respect of trademarks, trade names, copyrights, patents and other intellectual property rights connected with the goods and services and any value-added work thereto do not pass to the Customer, unless otherwise specifically authorised.
- (b) The Customer agrees to indemnify the Seller against all claims, damages, costs (including legal costs calculated on an indemnity basis) made by any person or company which the Seller may incur, either as a result of work done in accordance with the Customer's specifications or for the infringement of any intellectual property rights resulting from such customisation.
- (c) If an order includes software or other intellectual property, such software or other intellectual property is provided by the Seller to the Customer subject to the copyright and user licence, the terms and conditions of which are set forth in the licence agreement accompanying such software or intellectual property. Nothing herein shall be construed as granting any rights or licences to use any software in any manner or for any purpose not expressly permitted by such licence agreement. Unless otherwise set forth in writing by an authorised signatory of the Seller, the Seller is not the licensor and the Customer acquires the licence directly from the manufacturer or the manufacturer's licensor.

## 15. DATA PROTECTION

The Seller shall treat any personal information it collects on the Customer in accordance with the EU data protection principles and their implementation under the applicable national law of the Seller and other legislation related thereto. The Customer shall have the right to access its personal data and to correct them if they appear incorrect, in accordance with the Avnet Technology

Solutions EMEA Privacy Protection Policy, which is available on demand.

## 16. SUB-CONTRACTING

The Seller reserves the right to sub-contract any part of any work or supply of any goods or services.

## 17. THIRD PARTY CLAIMS

The contract or contracts to which these T&C's apply is between the Customer and the Seller only. No third party shall acquire any rights against the Seller and the Seller shall have no liability with regard to any third party arising out of or in connection with any contract. Furthermore the Customer shall indemnify the Seller against all actions, claims or demands by third parties in tort or otherwise arising directly or indirectly in connection with the goods (or the use of the goods) or the services provided, if such action, claim or demand is caused by or attributable, even partially, to the Customer.

## 18. ASSIGNMENT

The contract, of which these T&C's are part, may be assigned in whole or in part by the Seller without the prior written consent of the Customer. The Customer shall not assign or transfer or purport to assign or transfer the contract, of which these T&C's are part, or of the benefit thereof to any other person, without the written consent of the Seller.

## 19. HEADINGS

The headings of these T&C's are for convenience only and shall have no effect on the interpretation thereof.

## 20. WAIVER

The Seller's failure to enforce its rights under or insist on any occasion upon the performance of the contract or these T&C's shall not act or be deemed as a waiver of such rights (including with respect to a breach by the Customer) or acceptance of any variation of these T&C's.

## 21. NOTICE

Any notice required in these T&C's shall be in writing (by regular mail, fax or e-mail).

## 22. TERMINATION

1. The Seller shall be entitled by notice in writing to terminate any contract without prejudice to any claim or right the Seller may otherwise make or exercise where:
  - (a) exceptional circumstances render impossible any further professional cooperation between parties;
  - (b) the Customer is in breach of any term, condition or provision of any contract and/or these T&C's or as set out in law, to the extent that these are not remedied by the Customer within a reasonable period.
2. Upon termination, the Seller can suspend and cancel any confirmed delivery and claim all outstanding amounts immediately.

## 23. JURISDICTION

These T&C's shall be governed by and construed in accordance with the laws of the Netherlands, the U.N. Convention on the International Sale of Goods excluded, and the courts of Eindhoven shall have exclusive jurisdiction for all disputes arising in connection with these T&C's or relating thereto or in connection with any order, contract, delivery of goods or provision of services between the Seller and the Customer. However, the Seller reserves the right to sue the Customer at the Customer's registered office.