

## TERMS AND CONDITIONS OF SALE

**1. INTERPRETATION**

1.1 Definitions. In these Conditions, the following definitions apply:  
**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with 12.4.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Force Majeure Event:** has the meaning given to it in clause 11.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the goods, as set out overleaf.

**Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the customer and the supplier

**Supplier:** Amantys Power Electronics Ltd. registered in England and Wales with company number 09618523.

1.2 Construction. In these Conditions, the following rules apply:

- (a) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (c) a reference to **writing** or **written** includes emails.

**2. BASIS OF CONTRACT**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

**3. GOODS**

3.1 The Goods are described in the relevant Supplier's data sheet

3.2 The Supplier reserves the right to amend the specification of the Goods. The Supplier will give 60 days written notice of such an amendment unless the amendment is required to meet any applicable statutory or regulatory requirement.

**4. DELIVERY**

4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Goods are supplied Free Carrier (FCA Incoterms 2010) and the Customer shall collect the Goods from the Supplier's fulfilment company at Thetford, United Kingdom, or such other location as may be advised by the Supplier before delivery (**Delivery Location**) within 3 Business Days of the Supplier notifying the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the completion of loading of the Goods at the specified Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If ten (10) Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

**5. QUALITY**

5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 All other warranties other than that provided in respect of the Warranty Period under clause 5.1 are expressly excluded and except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods act 1997 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

**6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2 or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

**7. PRICE AND PAYMENT**

7.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery.

7.2 The price of the Goods is inclusive of the costs and charges of the packaging.

7.3 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.5 The Customer shall pay the invoice in full and in cleared funds within 30 Business Days of the date of the invoice unless specified otherwise in the sales quotation the order was placed against. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base 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 Customer shall pay the interest together with the overdue amount.

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- 7.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer 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 Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8. CUSTOMER'S INSOLVENCY OR INCAPACITY**
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- a meeting of creditors of the Customer being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to the Customer;
  - a chargeholder, receiver, administrative receiver or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of the Customer;
  - the Customer ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
  - the Customer or its directors or the holder of a qualifying floating charge or any of its creditors giving notice of their intention to appoint, appointing or making an application to the court for the appointment of, an administrator;
  - a petition being advertised or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of the Customer; or
  - the happening in relation to the Customer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9. RESTRICTIONS ON USE OF GOODS**
- 9.1 The Customer shall not, and shall not allow its officers, employees or contractors to, use the Goods:
- for any military purpose;
  - in medical or life support systems;
  - otherwise than in accordance with good and prudent industry practice and the Suppliers instructions (including any instructions, notices or safety information delivered with the Goods);
  - to reverse engineer the Goods;
  - in any way which is to the Customers' actual knowledge directly or indirectly, financially or otherwise, detrimental to Amantys Power Electronics; or
  - for any purpose other than the intended purpose of such Goods
- 9.2 Where the Goods are marked as prototypes or development samples, or where they are described as prototypes or development samples in any documentation from Amantys Power Electronics then the Customer shall not, and shall not allow its officers, employees or contractors to, use the Goods for any other purpose other than the development or testing of their products in a controlled environment and will not endanger the safety of the Customer's personnel or any members of the public.
- 9.3 The Customer shall be responsible to ensure that any use of the Goods complies with all relevant export requirements and that all necessary export licenses are in place and adhered to before exporting the Goods.
- 9.4 The Supplier shall under no circumstances be liable to the Customer in the event of any breach of clauses 9.1 or 9.2 by the Customer and the Customer hereby indemnifies the Supplier against all losses, damages or expenses howsoever arising from or in connection with any claim or threatened claim which may be brought against the Supplier by a third party in relation to a use of the Goods by the Customer which breaches clause 9.1 or 9.2.
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- for death or personal injury caused by the Supplier's negligence;
  - for breach of any condition as to title or quiet enjoyment implied by section 12 Sale of Goods Act 1979, section 2 Supply of Goods and Services Act 1982 or section 8 Supply of Goods (Implied Terms) Act 1973;
  - for fraud or fraudulent misrepresentation; or
  - any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.2 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 10.3 the Supplier's total liability to the Customer 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 in no circumstances exceed the price of the goods.
- 11. FORCE MAJEURE**
- 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 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.
- 12. GENERAL**
- 12.1 **Assignment and subcontracting.** The Customer 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 Supplier
- 12.2 **Waiver.** 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
- 12.3 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.4 **Variation.** Except as set out in these Conditions, 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 Supplier.
- 12.5 **Governing law and jurisdiction.** 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.