

Conditions of Sale



All orders are accepted by either Brigade Electronics Group Plc (company number 07107804 with registered office address: Brigade House, The Mills, Station Road, South Darenth, Kent, DA4 9BD) or Brigade Electronics (UK) Limited (company number 01261602 with registered office address: Brigade House, The Mills, Station Road, South Darenth, Kent, DA4 9BD) (as specified at the time of the order) ("**Brigade**") subject to these conditions of sale ("**Conditions**"). These Conditions shall override any conflicting terms specified by the person or firm purchasing goods or services from Brigade ("**Purchaser**"), unless otherwise agreed in writing by a Director of Brigade.

Brigade must be notified of any objections to these Conditions in writing prior to any orders being submitted.

1. PRICES:

1.1 Unless otherwise agreed in writing, the price for goods and services shall be the price detailed in Brigade's order acknowledgement or, if no price is stated in the order acknowledgement, the price set out in Brigade's most recent price list in force at the date of despatch or performance of services.

1.2 All prices quoted are exclusive of Value Added Tax.

1.3 All prices quoted exclude the costs and charges of packaging, insurance and transport of goods, which shall be invoiced to the Purchaser in accordance with Brigade's current scale of charges (as notified and amended from time to time).

2. ORDERS:

2.1 An order constitutes an offer by the Purchaser to purchase goods or services in accordance with these Conditions ("**Order**").

2.2 The Purchaser is responsible for ensuring that the terms of any Order submitted are complete and accurate.

2.3 An Order shall only be deemed to be accepted when Brigade issues a written acceptance of the Order, or Brigade does any act consistent with accepting the Order (including commencing the supply of goods or services), at which point a contract shall come into existence between the Purchaser and Brigade.

2.4 Brigade may reject an Order where it is not satisfied of the Purchaser's credit-worthiness.

2.5 Brigade reserves the right to decline to trade with any company or person at its discretion.

2.6 If the Purchaser's Order requires Brigade to customise products in any way, the Purchaser will be liable to Brigade for the full costs (as notified by Brigade) of the customised products if the Order is subsequently cancelled or amended for any reason.

2.7 The Purchaser is responsible for ensuring that any applicable specifications that are submitted to Brigade in connection with customising products are complete and accurate. Brigade reserves the right to amend the price if the specification is modified in any way.

2.8 Unless otherwise agreed in writing, any samples, drawings, or advertising produced by Brigade, and any illustrations contained in Brigade's catalogues or brochures, are produced for the sole purpose of giving an approximate idea of the goods referred to in them. They shall not form part of the contract between Brigade and the Purchaser.

3. GOODS:

3.1 Goods are as described in Brigade's catalogue (as modified by any applicable specification agreed between the parties) ("**Goods**").

3.2 To the extent that Goods are to be manufactured or customised in accordance with a specification supplied by the Purchaser, the Purchaser shall indemnify Brigade against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Brigade in connection with any claim made against Brigade for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Brigade's use of the specification.

3.3 Brigade reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. DELIVERY:

4.1 Unless otherwise agreed in writing, shipment shall be made by a carrier of Brigade's choice.

4.2 Goods will normally be despatched on the same or next working day as that on which the Order is accepted, or on the agreed call off date. Every effort will be made to effect delivery on this basis, or in accordance with any other agreed delivery programme, but no guarantee of delivery date can be given by Brigade and time for delivery shall not be of the essence.

4.3 Brigade shall not be liable for any delay in delivery of Goods that is caused by an event beyond its reasonable control ("**Force Majeure Event**") or the Purchaser's failure to provide adequate delivery instructions or any other instructions that are relevant to the supply of Goods.

4.4 For the avoidance of doubt, any delay in delivery shall not invalidate the contract between Brigade and the Purchaser.

4.5 Where offered by Brigade, the Purchaser may choose to pay for expedited delivery where the delivery date is guaranteed by a courier. Brigade shall not be liable for late delivery where the courier fails to deliver Goods on time.

4.6 Where agreed in advance, the Purchaser shall collect the Goods from Brigade's premises, or such other location as may be agreed, ("**Delivery Location**") within a reasonable period of time after Brigade notifies the Purchaser that the Goods are ready for collection, failing which Brigade may resell the Goods.

4.6.1 Where these Goods are intended for export from the United Kingdom, the Purchaser shall provide Brigade with evidence of export within 30 days of export. Brigade reserves the right to charge the Purchaser Value Added Tax on the cost of the Goods should the Purchaser fail to do so.

4.6.2 Brigade may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

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5. SERVICES:

- 5.1 Where Brigade provides any services ("Services"), Brigade shall supply the Services to the Purchaser in accordance with Brigade's standard operating procedures (as notified and amended from time to time) or in line with the agreed written specification, in all material respects, and shall use all reasonable endeavours to meet any performance dates specified in the Order confirmation or written specification.
- 5.2 Performance dates shall be estimates only and time for performance of the Services shall not be of the essence. Brigade reserves the right to make changes to any agreed Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services. Notification of changes will be made prior to the performance of the Services.
- 5.3 The Purchaser shall provide Brigade with such information and materials as Brigade may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects.
- 5.4 If Brigade's performance of the Services is prevented or delayed by any act or omission by the Purchaser or failure by the Purchaser to perform any relevant obligation, Brigade shall have the right to suspend performance of the Services until the default is remedied and Brigade shall not be liable for any costs or losses sustained or incurred by the Purchaser arising directly or indirectly from Brigade's failure or delay.
- 5.5 Unless otherwise agreed in writing, all intellectual property rights in or arising out of or in connection with the Services shall be owned by Brigade.

6. INVOICING AND PAYMENT:

- 6.1 Brigade may invoice the Purchaser for Goods and Services at any time after the Order is accepted.
- 6.2 Payment for Goods and Services is due in full and cleared funds in advance unless the Purchaser is granted a credit account by Brigade, in which case all invoices are payable either:
 - 6.2.1 By the end of the calendar month immediately following the month of invoice. Brigade reserves the right to cancel a credit account at any time at its discretion; or
 - 6.2.2 In accordance with alternative payment terms agreed between Brigade and the Purchaser in writing. Where alternative payment terms are agreed, the Purchaser shall provide on demand such information as is needed to enable Brigade to evaluate the Purchaser's financial status. Brigade reserves the right to cancel or change alternative payment terms at any time at its discretion.
- 6.3 Time for payment is of the essence.
- 6.4 If payment is overdue Brigade shall be entitled to:
 - 6.4.1 charge the Purchaser interest (both before and after any judgment) on the amount unpaid at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998, until payment in full is made (for the purposes of calculating interest any part of a month being treated as a full month); and
 - 6.4.2 suspend the delivery or performance of any other Orders until payment is received in full.
- 6.5 The Purchaser shall pay all amounts due to Brigade in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 6.6 Brigade may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by Brigade to the Purchaser.

7. CLAIMS:

- 7.1 Written notification of non-delivery of Goods or failure to provide Services must be given within fourteen (14) days of the estimated delivery date or performance date, quoting the invoice number. If the Purchaser fails to give notice in writing in accordance with these Conditions, then the Goods shall be deemed to have been delivered, or Services provided, free of defect to the Purchaser.
- 7.2 Brigade shall not be liable to compensate the Purchaser for non-delivery or late delivery of Goods or Services, nor shall claims made pursuant to these Conditions be grounds for cancellation of the contract or Order.

8. PASSAGE OF RISK AND PROPERTY:

- 8.1 Goods supplied by Brigade shall be at the Purchaser's risk immediately on completion of delivery.
- 8.2 The Purchaser shall insure the Goods from delivery.
- 8.3 Legal title to all Goods supplied by Brigade to the Purchaser will continue to belong to Brigade until such time as the Purchaser has paid for the Goods in full, including VAT, and has also paid for all other Goods and Services supplied by Brigade to the Purchaser, in which case title to the Goods shall pass at the time of payment of all such sums.
- 8.4 Until such time as property and title has passed the Purchaser shall:
 - 8.4.1 hold the Goods on a fiduciary basis as Brigade's Bailee;
 - 8.4.2 store the Goods so that they remain readily identifiable as Brigade's property and not remove, deface or obscure any identifying mark or packaging on or in relation to the Goods;
 - 8.4.3 keep the Goods in satisfactory condition and keep them insured against all risk for their full purchase price from the date of receipt; and
 - 8.4.4 notify Brigade if it becomes subject to any form of insolvency proceedings or process.
- 8.5 If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clauses 11.1.3 to 11.1.7 inclusive then, without limiting any other right of remedy Brigade may have, Brigade may at any time:
 - 8.5.1 require the Purchaser to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - 8.5.2 if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.
- 8.6 Brigade will be entitled to recover from the Purchaser all costs including legal fees which have been occasioned in the repossession of Goods.

9. RETURNS:

- 9.1 Returns for credit are accepted only when Brigade's prior consent has been obtained. Such returns must be sent to Brigade freight pre-paid and Goods must be in an unused and undamaged condition and accompanied by the relevant invoice details.
- 9.2 All returns under clause 9.1 are made at the Purchaser's own risk and will be subject to a handling charge of fifteen percent (15%) based on the price charged to the Purchaser in consideration of Brigade's re-stocking costs.
- 9.3 Brigade cannot accept the return of Goods customised to the Purchaser's requirements.

10. WARRANTY AND LIABILITY:

- 10.1 Subject to clause 10.4, Brigade warrants all Goods to be free from defect in material and workmanship in normal use provided that they have been installed and operated in accordance with instructions supplied.
- 10.2 Services will be provided using reasonable care and skill.
- 10.3 The commencement date for all warranties is the date of delivery of the Goods to the Purchaser or the performance of the Services unless otherwise agreed in writing by Brigade.
- 10.4 The period during which the warranty given under clause 10.1 applies is as stated in Brigade's most recent catalogue and/or specification at the date the Order is accepted. Brigade makes no other warranty, express or implied, with respect to the Goods or Services, their marketability, quality or fitness for any particular use or purpose. In particular but without prejudice to these Conditions, no responsibility is assumed for incidental or consequential damage by reason of any warranty express or implied.
- 10.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded.
- 10.6 Subject to clause 10.7, the Purchaser may reject any Goods delivered to it that do not comply with clause 10.1 provided that notice of rejection is given to Brigade:
 - 10.6.1 in the case of a defect that is apparent on normal visual inspection, within five (5) working days of delivery; and
 - 10.6.2 in the case of a latent defect, within a reasonable time of the latent defect having become apparent.
- 10.7 Brigade only accepts warranty claims that are made in accordance with its "non-conforming product" procedure, the requirements of which include the ability to reproduce the claimed fault and the right to charge a handling fee if no fault is found. Full terms of this procedure are available on request. Furthermore, Brigade shall not be liable for Goods' failure to comply with the warranty set out in clause 10.1 above in any of the following events:
 - 10.7.1 the Purchaser makes any further use of the Goods after giving notice in accordance with clause 10.6;
 - 10.7.2 the defect arises because the Purchaser or any other third party failed to follow Brigade's instructions;
 - 10.7.3 the defect arises as a result of Brigade following any specification supplied by the Purchaser;
 - 10.7.4 the Purchaser or any third party alters or repairs the Goods without the consent of Brigade;
 - 10.7.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 10.7.6 the Goods differ from their description or an agreed specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 10.8 If the Purchaser rejects any Goods under clause 10.6, Brigade shall at its option either repair or replace the Goods.
- 10.9 Nothing in these Conditions shall limit or exclude Brigade's liability for:
 - 10.9.1 death or personal injury caused by its negligence;
 - 10.9.2 fraud or fraudulent misrepresentation;
 - 10.9.3 breach of the terms implied by section 12 of the Sales of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 10.9.4 defective products under the Consumer Protection Act 1987.
- 10.10 Subject to clause 10.9, Brigade's total liability to the Purchaser in respect of any losses arising under or in connection with the contract between the parties, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed one hundred and fifty percent (150%) of the price of the Goods or Services in question.
- 10.11 Subject to clause 10.9, Brigade shall under no circumstances whatsoever be liable to the Purchaser, 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 between the parties pursuant to these Conditions.

11. TERMINATION:

- 11.1 Without prejudice to any other rights it may have, Brigade may, by notice to the Purchaser, immediately terminate any contract between the Purchaser and Brigade, suspend any further deliveries or service provision to the Purchaser, and recover from the Purchaser all sums due from it under any contract with Brigade (notwithstanding any period of credit which may have been agreed), together with any accrued interest under clause 6.4 and other legitimate charges and any loss caused to Brigade as a result of any termination, if:-
 - 11.1.1 any payment due by the Purchaser to Brigade is overdue in whole or in part; or
 - 11.1.2 the Purchaser commits a breach of any term of these Conditions and (if such a breach is remediable) fails to remedy that breach within seven (7) days of being notified in writing to do so; or
 - 11.1.3 a resolution is passed and a court order made resolving or ordering the Purchaser to be wound up, placed into liquidation or ordering that an administrator be appointed in relation to all or any of its assets; or
 - 11.1.4 a receiver, manager or administration receiver is appointed over all or any of the Purchaser's assets; or
 - 11.1.5 the Purchaser ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.1.6 the Purchaser (being an individual) has a petition in bankruptcy entered against him; or
 - 11.1.7 the Purchaser's financial position deteriorates to such an extent that in Brigade's opinion the Purchaser's capability to adequately fulfil its obligations under the contract has been placed in jeopardy.

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11.2 On termination for any reason:

11.2.1 clauses which expressly or by implication survive termination shall continue in full force and effect following termination; and

11.2.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall be unaffected, including the right to claim damages in respect of any breach of contract which existed at or before the date of termination.

12. **FORCE MAJEURE:** If Brigade is delayed, hindered or prevented from performing any obligation due to a cause beyond its reasonable control (including without limitation due to any inability to procure services, materials or articles required for the performance of the contract at commercially acceptable prices), Brigade may at its sole option delay the performance of, or cancel the whole or any part of the contract, and Brigade shall not be responsible for such delay or cancellation or any inability to deliver.

13. **SEVERANCE & WAIVER:**

13.1 If a court decides that any provision or part provision of these Conditions cannot be enforced, that particular provision will not apply but the rest of these Conditions will.

13.2 Any failure by Brigade to enforce any of its rights under this contract shall not be taken as a waiver of any of Brigade's rights including those in these Conditions.

14. **CHOICE OF LAW:**

14.1 All contracts between Brigade and the Purchaser shall be governed by the laws of England.

14.2 Both parties agree to submit to the exclusive jurisdiction of the English courts.

15. **NOTICES:**

15.1 All communications between the parties about the contract between them or these Conditions must be in writing and delivered by hand or by pre-paid first class post or by email to its registered office or such other address as may be notified to the other party from time to time.

15.2 Communications shall be deemed to have been received:

15.2.1 if sent by first class pre-paid post, four (4) days after posting (exclusive of the date of posting);

15.2.2 if delivered by hand, on the day of delivery; and

15.2.3 if sent by email on a working day prior to 4pm, at the time of transmission, and otherwise on the next working day provided that the sender can show satisfactory transmission.

16. **THIRD PARTY RIGHTS:**

16.1 No one other than Brigade (or its permitted assignees) and the Purchaser shall have the right to enforce any of these terms.

17. **VARIATION:**

17.1 No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. **ENTIRE AGREEMENT:**

18.1 These Conditions constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between Brigade and the Purchaser, whether written or oral, relating to its subject matter.

18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions.

19. **ASSIGNMENT:**

19.1 Brigade may at any time assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under these Conditions.

19.2 The Purchaser may not assign, transfer, subcontract, or deal in any other manner with any or all of its rights or obligations under these Conditions without the prior written consent of Brigade.

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