

## General Terms and Conditions of the Würth Electronics UK Limited

– As of: December 2016 –



### 1. INTERPRETATION

**1.1** The definitions and rules of interpretation in this condition apply in these conditions.

**Buyer:** the person, firm or company who purchases the Goods or Services from the Company.

**Company:** Würth Electronics UK Limited of 8th Floor, 8 Exchange Quay, Salford Quays, Manchester, M5 3EJ.

**Contract:** any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4.

**Deliverables:** all Documents, products and materials developed by the Company in connection with the supply of the Goods or Services including computer programs, data, reports and specifications.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

**In-put Material:** all Documents, information and materials provided by the Buyer to the Company in connection with the Goods or Services including, computer programs, data, reports and specifications.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Pre-existing Materials:** all Documents, information and materials provided by the Company to the Buyer in connection with the supply of the Goods or Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

**Project:** the project as described in the Project Plan.

**Project Plan:** the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Services.

**Services:** the services to be provided by the Supplier under the Contract as set out in the Project Plan.

**1.2** A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

**1.3** Words in the singular include the plural and in the plural include the singular.

**1.4** A reference to one gender includes a reference to the other gender.

**1.5** Condition headings do not affect the interpretation of these conditions.

### 2. APPLICATION OF TERMS

**2.1** Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

**2.2** No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

**2.3** These conditions apply to all the Company's sales of Goods or supply of Services and any variation to these conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed on behalf of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

**2.4** Each order or acceptance of a quotation for Goods or Services issued by the Buyer to the Company shall be deemed to be an offer by the Buyer to buy the Goods or Services subject to these conditions.

**2.5** No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer or commences performance of the Services.

**2.6** The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

**2.7** Any quotation issued by the Company is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

### 3. DESCRIPTION OF GOODS/SERVICES

**3.1** All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They shall not form part of the Contract.

**3.2** If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with specifications or designs submitted by the Buyer then:

- (a) the Buyer will be responsible for all aspects of the specifications or designs including the design of the Goods, the suitability of the materials to be used in the manufacture of the Goods and the fitness for purpose of the Goods; and
- (b) the Buyer will indemnify the Company against all losses, damages, costs and expenses amended against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specifications or designs.

### 4. DELIVERY OF GOODS

**4.1** Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

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**4.2** The Buyer shall take delivery of the Goods within 3 working days of the Company giving it notice that the Goods are ready for delivery.

**4.3** Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

**4.4** Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract.

**4.5** If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisations:

- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

**4.6** The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

**4.7** The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

**4.8** Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

### 5. NON-DELIVERY

**5.1** The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

**5.2** The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 3 working days of the date when the Goods would in the ordinary course of events have been received.

**5.3** Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

### 6. PERFORMANCE OF SERVICES

**6.1** The Services shall be provided until the Project is completed in accordance with the Project Plan.

**6.2** The Company will use reasonable endeavours to provide the Services and to deliver the Deliverables to the Buyer in accordance in all material aspects with the Project Plan.

**6.3** The Company shall use reasonable endeavours to meet any performance dates specified in the Project Plan but any such dates shall be estimates only and time shall not be of the essence of the Contract.

### 7. BUYER'S OBLIGATIONS

**7.1** The Buyer shall:

- (a) co-operate with the Company in all matters relating to the supply of Goods or Services;
- (b) provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Buyer's premises, office accommodation, data and other facilities as requested by the Company;
- (c) provide, in a timely manner, such In-put Material and other information as the Company may request and ensure that it is accurate in all material respects;

**7.2** If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.

**7.3** The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing.

### 8. RISK/TITLE IN GOODS

**8.1** The Goods are at the risk of the Buyer from the time of delivery.

**8.2** Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Buyer on any account.

**8.3** Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

**8.4** The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

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- (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

**8.5** The Buyer's right to possession of the Goods shall terminate immediately if:

- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Goods.

**8.6** The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

**8.7** The Buyer grants the Company, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

**8.8** Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

**8.9** On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 8 shall remain in effect.

### 9. PRICE

**9.1** The price of the Goods or Services shall be the Company's quoted price, or where no price has been quoted (or a quoted price is no longer valid) the price agreed on the acceptance of the Buyer's order.

**9.2** The Company reserves the right, on giving notice to the Buyer at any time before delivery of the Goods or completion of the Services to increase the price of the Goods or Services to reflect any increase in the cost to the Company of supplying the Goods or Services which is due to any factor beyond the control of the Company (such as without limitation, any foreign exchange fluctuation or significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, guarantees or specifications for the Goods or Services which is requested by the Buyer or any delay caused by any instructions of

the Buyer or failure of the Buyer to give the Company adequate information or instructions.

**9.3** The price for the Goods and Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for them.

### 10. PAYMENT

**10.1** Unless otherwise stated in the Contract and subject to condition 10.4 payment of the price for the Goods or Services is due within 30 days of the date of the Company's invoice. Time for payment shall be of the essence.

**10.2** Preferred method of payment is via BACS direct into our bank account as detailed on our invoices. No discounts arise for early payment.

**10.3** No payment shall be deemed to have been received until the Company has received cleared funds.

**10.4** All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

**10.5** The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

**10.6** If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

**10.7** The Company shall be entitled to suspend delivery of the Goods or performance of Services or (at its option) cancel the Contract (without liability to the Buyer) if either:-

- (a) the Buyer fails to pay the Company any sum due pursuant to the Contract; or
- (b) the Company is of the reasonable opinion that due to the Buyer's financial circumstances, the Buyer will not be in a position to pay sums which will become due to the Company under the Contract.

### 11. INTELLECTUAL PROPERTY RIGHTS

**11.1** As between the Buyer and the Company, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Company. Subject to condition 11.2, the Company licenses all such rights to the Buyer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Buyer to make reasonable use of the Deliverables and the Goods or Services.

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**11.2** The Buyer acknowledges that, where the Company does not own any Pre-existing Materials, the Buyer's use of rights in Pre-existing Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Buyer.

### 12. CONFIDENTIALITY AND THE COMPANY'S PROPERTY

**12.1** The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Company, its employees, agents or sub-contractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain. The Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to the Company, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Buyer.

**12.2** All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Buyer (including Pre-existing Materials) shall, at all times, be and remain as between the Company and the Buyer the exclusive property of the Company, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

**12.3** This condition 12 shall survive termination of the Contract, however arising.

### 13. QUALITY

**13.1** Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

**13.2** The Company warrants that (subject to the other provisions of these conditions) on delivery and for a period of 12 months from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

**13.3** The Company warrants that it will perform the Services with reasonable skill and care.

**13.4** The Company shall not be liable for a breach of the warranty in condition 13.2 unless:

- (a) the Buyer gives written notice of the defect in the Goods to the Company, within 3 working days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

**13.5** The Company shall not be liable for a breach of the warranty in condition 13.2 if:

- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow the Company'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; or

- (c) the Buyer alters or repairs such Goods without the written consent of the Company; or
- (d) the defect arises from any drawing, design or specification supplied by the Buyer; or
- (e) the defect arises from fair wear and tear, wilful damage, accidental damage, misuse or abnormal working conditions.

**13.6** Subject to condition 13.4 and condition 13.5, if any of the Goods do not conform with the warranty in condition 13.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

**13.7** If the Company complies with condition 13.6 it shall have no further liability for a breach of the warranty in condition 13.2 in respect of such Goods.

**13.8** Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.

**13.9** If any of the Services have not been performed in compliance with the warranty in condition 13.3 the Company will at its cost re-perform the Services as necessary to ensure compliance.

**13.10** If the Company complies with condition 13.9 it shall have no further liability for a breach of the warranty in condition 13.3 in respect of such Services.

### 14. LIMITATION OF LIABILITY

**14.1** Subject to condition 4, condition 5 and condition 13, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of the Contract;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods or the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

**14.2** Subject to condition 14.3 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**14.3** Nothing in these conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation; or
- (e) for any liability incurred by the Buyer as a result of any breach by the Company of the conditions implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

**14.4** Subject to condition 14.2 and condition 14.3:

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- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

### 15. CANCELLATION

No order placed by the Buyer which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer will indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

### 16. ASSIGNMENT

**16.1** The Company may assign the Contract or any part of it to any person, firm or company.

**16.2** The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

### 17. FORCE MAJEURE

The Company reserves the right to defer the date of delivery of the Goods or the performance of the Services or to cancel the Contract (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

### 18. GENERAL

**18.1** Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

**18.2** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

**18.3** Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

**18.4** Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

**18.5** The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

**18.6** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

**18.7** Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### 19. COMMUNICATIONS

**19.1** All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

**19.2** Communications shall be deemed to have been received:

- (a) if email the date the email is received; or
- (b) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (c) if delivered by hand, on the day of delivery; or
- (d) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

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