Terms & Conditions of Sale

These Terms and Conditions of Sale ("Conditions") apply to all quotations and contracts of sale for and on behalf of Northern Engineering (Sheffield) Limited ("NES"). These conditions are the only terms and conditions on which NES does business and will apply to the Contract to the exclusion of all other terms that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any variations to these Conditions are not valid unless agreed in writing by NES.

1. Definitions

1.1. Arising IP: means all Intellectual Property created or developed by a party in connection with the development and / or manufacture of the Bespoke Tooling and / or the Goods;

1.2. Background IP: means any Intellectual Property, other than Arising IP, that is used in connection with the development of Bespoke Tooling.

1.3. Bespoke Tooling: means bespoke moulds or tools developed and / or manufactured by NES for the production of the Goods.

1.4. Business Day: means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

1.5. Contract: means the contract between NES and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

1.6. Customer: means the person or firm who purchases the Goods from NES.

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

1.8. Intellectual Property: means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), semiconductor topography rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, such rights and all similar rights or forms of protection and all future rights of such nature.

1.9. Order: means the Customer's order for the Goods as set out in the Customer's purchase order form or written acceptance of NES' quotation as the case may be.

1.10. Specification: means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and NES.

1.11. Tooling Agreement: means any written agreement between the Customer and NES governing the development and manufactured by NES of Bespoke Tooling.

2. Contract Prices and Payment Terms

2.1. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Contract is not concluded until the Order has been reviewed and accepted in writing by NES, at which point the Contract shall come into existence. NES reserves the right to impose a minimum order value or a minimum line value which must be met before an Order is accepted by NES.

2.2. NES' quotations are given without commitment, do not constitute an offer and may be withdrawn or altered at any time up to the issue of NES' written acceptance of the Customer's order. Unless withdrawn by NES, the quotation will remain valid for the period stated therein, or when no period is stated, for 30 days only after its date.

2.3. The price of the Goods shall be the price quoted by NES. Prices are exclusive of V.A.T. The Customer shall, on receipt of a valid VAT invoice from NES, pay to NES such additional amounts in respect of VAT as are chargeable on the supply of the Goods. All prices, multipliers and discounts are subject to alteration without notice prior to acceptance of the Order by NES.

2.4. All prices quoted for goods are for delivery DAP (Incoterms 2020) and exclusive of the costs of packaging, insurance and transport of the Goods, which will be charged to the Customer irrespective of order value.

2.5. NES may invoice the Customer for the Goods at any time on or after the completion of delivery but reserves the right to require payment in advance of delivery. Payment will be due within thirty days of the date of NES' invoice or such other date as may be agreed in writing by the parties.

2.6. NES reserves the right to charge interest at the rate of 4% per annum above the Bank of England base rate calculated on a daily basis on all sums due to NES and unpaid from the date upon which payment is due under these Conditions until the date upon which payment is made including periods both before and after any Court judgement.

2.7. NES shall be entitled to increase its price at any time before delivery to take account of any increase in the cost to NES of purchasing any goods or materials or manufacturing, working on or supplying the Goods or any services, including any such increase arising from any error or inadequacy in any specification, instructions or designs provided by the Customer or any modification carried out by NES at the Customer's request, and such increased prices ruling at the date of despatch by NES shall be substituted for the previous contract price.

2.8. Where the Customer requests NES to provide, and NES agrees to provide, regulatory or other documentation (including but not limited to certificates of conformity or European standards declarations) NES reserves the right to make a reasonable charge for such documentation.

3. Tooling

3.1. If Bespoke Tooling is required, NES and the Customer shall enter into a Tooling Agreement before the start-up of production which will form part of the Contract. The Customer will be charged a part development cost as specified in the Tooling Agreement and NES will own all Bespoke Tooling. Unless otherwise specified in the Tooling Agreement the invoicing of the Bespoke Tooling cost will take place in two parts as follows: (i) 50% of the total cost will be invoiced immediately upon acceptance of the Order; and (ii) 50% of the total cost will be invoiced on despatch of the first article or parts following the first production run of the Goods produced.

3.2. All Background IP will remain the exclusive property of the party owning it.

3.3. All Arising IP will be owned by the party which created or developed it. For the avoidance of doubt NES will own all Arising IP created or developed by NES.

3.4. Customer hereby grants to NES a royalty free, non exclusive, transferable, perpetual and irrevocable licence to use in any way any and all (i) Arising IP created or developed by the Customer; (ii) Customer Background IP; and (iii) jointly owned Arising IP, as NES may require to enable NES to design, develop, manufacture, use, sell, commercialise or exploit in any way the Bespoke Tooling.

3.5. NES will ensure that the Bespoke Tooling is appropriately stored and maintained in a satisfactory condition. If the Bespoke Tooling requires (i) modification as a result of changes to Specification; or (ii) repair or replacement due to wear and tear caused by use in the production of the Goods, the cost of such modification, repair or replacement shall be charged to the Customer and shall be payable by the Customer within 14 days of receipt of an invoice from NES or as otherwise specified in the Tooling Agreement.

3.6. NES shall retain any Bespoke Tooling for a period of 3 years from date of the last delivery of Goods created with such Bespoke Tooling to the Customer and thereafter shall have no further obligation to the Customer in respect of such Bespoke Tooling.

4. Quantities

4.1. The price quoted is for stipulated quantities only. Due to the nature of the manufacturing process it is not always possible to deliver the exact quantity ordered. The Customer will not be entitled to reject the Goods if NES delivers up to and including 10% above or below the quantities ordered and the order will be deemed complete, but a pro-rata adjustment of the price shall be made where necessary to reflect the actual quantity delivered.

5. Delivery Date, Risk and Cancellation

5.1. Where NES delivers the Goods delivery shall be deemed completed on the Goods' arrival at the agreed delivery location.

5.2. NES will endeavour to keep to delivery times quoted or indicated in its acceptance of the Order, but these are valid as indications only, and cannot be guaranteed and the time of delivery is not of the essence. NES will not be liable for any additional costs incurred by the Customer should NES fail to meet the indicated date of delivery.

5.3. NES reserves the right to deliver Goods by instalments and invoice instalments separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in any instalment will not entitle the Customer to cancel any other instalment.

5.4. Customers wishing to collect Goods from NES' warehouse must do so within 3 Business Days of notification that the Goods are ready for collection. If the Customer fails to take delivery of the Goods (except where such failure is caused by breach of contract by NES) then (i) delivery of the Goods shall be deemed to have been completed at 5.00 p.m. on the third Business Day after the day on which NES notified the Customer that the Goods were available for collection and NES shall be entitled to raise an invoice for such Goods; and (ii) NES will store the Goods until delivery takes place and will be entitled to charge the Customer for all related costs and expenses.

5.5. If five Business Days after the day on which NES notified the Customer that the Goods were available for collection the Customer has not taken delivery of them, NES shall at its option be entitled to (i) deliver the Goods to the Customer at any location where the Customer conducts business and to charge the Customer for storage and delivery; or (ii) 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.

5.6. NES reserves title to the Goods until the earlier of (i) payment in full being received from the Customer for those Goods and any Goods previously supplied to the Customer or (ii) the Customer resells the Goods in the normal course of business, in which case title to the Goods shall pass to the Customer immediately before the time at which resale by the Customer occurs. Until title to the Goods passes to the Customer, the Customer shall hold the goods as fiduciary agent and bailee, and shall keep the goods separate from those of the Customer and any other third party, and properly store, protect, insure and identify the goods as NES' property. Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) NES shall be entitled at any time to require the Customer to deliver up the goods to NES and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

5.7. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in condition 9.1 then, without limiting any other right or remedy NES may have, the Customer's right to resell the Goods or use them in the ordinary course of its business shall cease immediately.

5.8. Risk of damage to or loss of the Goods passes to the Customer on delivery notwithstanding that the title to the Goods has not passed to the Customer.

5.9. The Customer must check the Goods immediately on receipt and any transport or other visible damages must be noted on the transport document before it is signed in receipt of Goods, and reported to NES without delay.

5.10. If NES 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.

6. Quality and Suitability, Warranties and Exclusion of Liability

6.1. The Customer will at all times determine the suitability of NES' goods for its intended use and NES makes no representation or warranty that the Goods are fit for any intended use made known to NES by the Customer.

6.2. Any information provided by NES in relation to the composition of the Goods which is not set out in writing within the Order, Specification or these Conditions is provided to the best of NES' knowledge but NES makes no representation or warranty as to the accuracy of such information and shall not be responsible for any losses or costs suffered by the Customer arising as a result of the Customer's reliance on such information.

6.3. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.4. The Customer will accept slight and immaterial imperfections in colour and appearance. All defects, damages or shortages must be notified to NES by the Customer within seven days of receipt of Goods. Thereafter liability will only be accepted by NES in respect of latent defects.

6.5. NES warrants that on delivery and for a period of 12 months from date of delivery, or such other period as may be set out in the Specification, the Goods, will be free from material defects in materials and workmanship when used properly and in accordance with the directions for the Good's use and will conform in all material respects to description and Specification. NES shall not be liable for the failure of the Goods to comply with warranty if the defect arises as a result of fair wear and tear, damage, misuse or

alteration by the Customer, failure by the Customer to follow NES' oral or written instructions as to storage, installation, use and maintenance, if the Customer makes further use of the Goods after having discovered the defect, or the defect arises as a result of NES following any design or specification supplied by the Customer.

6.6. NES' liability to the Customer in respect of the Goods failure to comply with the warranty at condition 6.5 shall be limited to repair or replacement of the defective Goods, reprocess, or refund of the purchase price, at NES' option, and this shall be the Customer's sole remedy. The warranty set forth in condition 6.5 is the only warranty given by NES in respect of the Goods and no other warranties of any kind, whether statutory, written, oral express, or implied (including warranties of fitness for a particular purpose or satisfactory quality) shall apply.

6.7. The Customer shall indemnify NES against all action, claims or demands by third parties, howsoever arising, directly or indirectly, in connection with the use, functioning, performance or state of the Goods following delivery of the Goods to Customer except where such claims relate to death or personal injury caused by NES' negligence, or the negligence of its employees, agents or subcontractors.

6.8. Subject to condition 6.11, under no circumstances will NES be liable for any consequential or indirect damages; or for any loss of profits, loss of goodwill, costs of capital, loss due to interruption of business, or loss of anticipated savings, in each case whether direct or indirect. NES' 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.

6.9. NES' liability in relation to the supply of Goods which are based upon designs, constructions or specification made available by the Customer are limited to the actual manu facture of the Goods in accordance with such design, construction or specification.

6.10. To the extent that the Goods are to be manufactured in accordance with designs, constructions or specification supplied by the Customer, the Customer shall indemnify NES 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 reasonable professional costs and expenses) suffered or incurred by NES in connection with any claim made against NES for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with NES' use of such designs, constructions or specifications.

6.11. Nothing in these Conditions shall limit or exclude NES' liability for (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (ii) fraud or fraudulent misrepresentation; (iii) defective products under the Consumer Protection Act 1987; or (iv) any other liability which may not be excluded or limited by law.

7. Tolerances

7.1. The tolerance requirements normally applied by NES for the Goods shall apply unless otherwise agreed in the Specification or the Contract. Any changes in the tolerance requirements after conclusion of the Contract shall be made by written agreement between the parties.

8. Returns

8.1. NES will not accept the return of any Goods without its prior agreement. Any Goods which are authorised to be returned will remain at the risk of the Customer during transportation.

9. Termination

9.1. NES may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer (i) suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning given to those terms by the Insolvency Act 1986; (ii) enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them; (iii) passes a resolution or makes a determination for it to be wound up or has a winding up order made against it; (iv) has a receiver or administrative receiver appointed of it or of the whole or any part of its assets or appoints or has an administrator appointed of it; or (v) suffers any event or takes any step analogous to the events or steps in condition 9.1(i) to (iv) inclusive in any jurisdiction other than England and Wales.

9.2. On termination of the Contract for any reason the Customer shall immediately pay to NES all of NES' outstanding unpaid invoices and interest.

9.3. Following formation of the Contract the Customer shall not be entitled to cancel the Contract or any Order made under the Contract for convenience without the written approval of NES. Where such approval is given the Customer acknowl edges and agrees that upon receipt of an invoice issued by NES it shall reimburse to NES the full amount of any costs and expenses including labour costs already incurred by NES in the fulfilment of the Order as at the date of the written approval of cancellation ("Cancellation Date"), which shall include without limitation all non-cancellable liabilities incurred by NES to third parties as at the Cancellation Date whether or not the goods or services to which they relate have been received by NES, provided that NES shall take reasonable steps to limit such costs and liabilities where reasonably practicable.

9.4. NES shall at the request of the Customer and where reasonably practicable to do so, transfer to the Customer all work in progress and other materials procured for the purposes of fulfilling the cancelled Order upon receipt of payment in full of the cost of such work and materials in accordance with condition 9.3.

9.5. Provisions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. Force Majeure

10.1. NES shall not 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 an event beyond NES' reasonable control, including without limitation industrial or labour disputes, failure of energy sources or transport network, acts of God, war, terrorism, civil commotion, malicious damage, breakdown of plant or machinery, fires, floods, storms, earthquakes or default of suppliers or subcontractors.

11. Applicable Law

11.1. The Contract is subject to and will be construed in accordance with English Law. Each party to the Contract irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute arising under or in connection with the Contract.

12. Anti-Bribery & Corruption

12.1. NES is a responsible and ethical business that conforms to an Anti-Bribery & Corruption Policy (available for review on the NES website). NES will not directly or indirectly engage in bribery or corruption in any form and it has a zero tolerance approach to breach whether it involves private

individuals or public officials. NES will never accept, solicit, agree to receive, promise, offer or give a bribe or other improper payment.

12.2. NES expects its customers to comply with its Anti-Bribery & Corruption policy, or comply with their own, similar, Anti-Bribery & Corruption policies, when dealing with NES.

12.3. If any breach of this condition 12 is suspected or known by the customer, they must notify NES immediately.

13. Trade Compliance

13.1. NES is committed to acting in compliance with all applicable trade compliance regulation, including sanctions and export control laws. The Customer shall not cause NES to violate any such laws.

13.2. The Customer shall not directly or indirectly supply NES goods:

13.2.1. to any third party that is targeted by international sanctions measures; or

13.2.2. for any prohibited end use.

13.3. NES's supply of goods to the Customer is conditional upon NES securing any necessary export authorisation or licence.

13.4. If any breach of this condition 13 is suspected or known by the Customer, they must notify NES immediately.

13.5. NES reserves the right to rely on the indemnity provided for in clause 6.7 if it suffers any loss as a result of the Customer's non-compliance with this clause 13.

14. General

14.1. Any delay or failure by a party in exercising, or any waiver by a party of, its rights under or in connection with the Contract will not limit or restrict the future exercise or enforceability of those rights.

14.2. If any provision (or part of any provision) of the Contract is, or becomes illegal, invalid or unenforceable in any respect: (i) it will not affect or impair the legality, validity or enforce ability of any other provision of this Contract; and (ii) that provision (or part provision), will be deemed deleted.

14.3. A person who is not a party to the Contract will not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

14.4. The Contract constitutes the entire agreement and under standing between the parties in respect of its subject matter and supersedes and extinguishes all previous agreements, and understandings between, and representations given by or on behalf of, the parties, (whether written or oral), relating to the subject matter of the Contract.

14.5. Each party confirms that it has not relied upon, and (subject to condition 6.11) shall have no remedy in respect of, any agreement, warranty, statement, representation, under standing or undertaking made by any party unless that warranty, statement, representation, understanding or undertaking is expressly set out in the Contract.

14.6. Subject to condition 6.11, neither party shall be entitled to the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, under standing or undertaking whether or not it is set out in the Contract.

Northern Engineering (Sheffield) Limited
Haigh Moor Drive,
Brooklands Park,
Sheffield, UK,
S25 2JY

Tel: +44 (0) 1909 560 203
Fax: +44 (0) 1909 560 184
Email: jatkins@nes-ips.com
Web: www.nes-ips.com

Registration Number 2480998