

## CONDITIONS OF SALE AVNET LIMITED

### 11.2005

Unless otherwise stated in writing the following Conditions shall apply,

#### 1. Quotations and Acceptance

(a), Quotations are valid for thirty (30) days and represent no obligation until the Seller accepts the Purchaser's order.

(b), Any order sent to the Seller by the Purchaser (which expression shall include any principal on which behalf the person or company placing the order is acting as agent) shall be accepted entirely at the discretion of the Seller and if so accepted, the Seller's Conditions shall apply to the entire exclusion of those of the Purchaser contained on or referred to in an order form or other documents or correspondence from the Purchaser, and no addition, alteration or substitution of these terms shall be binding upon the Seller unless and until expressly accepted in writing by a duly authorized person on behalf of the Seller.

(c), Telephone orders will be accepted (only with Purchaser's official order number) where such orders are confirmed in writing by the Seller. Any written confirmation of such orders by the Purchaser must contain the confirmation reference given by the Seller at the time of order failing which any duplication of delivery must be accepted and paid for by the Purchaser.

(d), Any advice or recommendation given by the Seller (including its agents, servants, officers and employees) as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Purchaser's risk and accordingly the Seller shall not be liable for any such advice recommendation which is not confirmed in writing.

(e), the Purchaser acknowledges that in concluding any contract with the Seller pursuant to these Conditions, it is acting in the course of its business and not as a consumer (as such term is defined in the Irish Sale of Goods Acts 1893 and 1980 as amended).

#### 2. Price and Delivery

(a), Prices do not include VAT

(b), Unless otherwise agreed, all shipments by Seller are insured and all transportation charges shall be paid by the Purchaser in addition to the price of the products. Subject to possible other rights of Seller, delivery of the products to the carrier shall constitute delivery to the Purchaser and the risk shall thereupon pass to the Purchaser. Selection of the carrier and delivery route shall be made by Seller, unless specified by the Purchaser. ..

(c), Time of delivery shall not be of the essence and any delivery period quoted is an estimate only and commences from the Seller's acknowledgement of the Purchaser's order. Provided the Seller takes all reasonable steps to deliver the

Goods at the time stated, and gives the Purchaser reasonable notice if it is unable to meet any delivery date quoted, the Seller shall be under no liability for any delay or failure in delivery.

(d), The Seller reserves the right to deliver in more than one consignment and to invoice each consignment separately.

(e), Purchasers outside the Republic of Ireland are responsible at their own expense for obtaining an import licence required in the country of destination and the Seller is responsible for seeking any necessary licence to export from Germany.

### 3. Title and Risk

(a), Notwithstanding any agreed terms for payment the Goods are not sold or delivered on credit but on Condition that ownership therein shall not pass to the Purchaser until the Purchaser has paid in full all that it owes to the Seller including the full amount which may be due from the Purchaser to the Seller under any other contract, delivery or instalment.

(b), Until full payment has been made for the Goods by the Purchaser in accordance with Condition 3(a), the Seller's Goods shall be stored and kept separate from any other Goods of the Purchaser and of third parties and the purchaser shall identify the Goods as the property of the Seller. The purchaser shall not remove any identifying marks placed on the Goods by the Seller.

(c), Until full payment has been made for the Goods by the Purchaser in accordance with Condition 3(a), the Purchaser shall hold the Goods as the Seller's bailee and as its fiduciary and shall accordingly remain liable to account to the Seller for the Goods or, if the same shall be sold by the Purchaser for all of the proceeds, tangible and intangible (and including without limitation insurance proceeds and proceeds of proceeds), thereof. The Purchaser shall as trustee for the Seller, pay such proceeds into a bank account separate from any other Goods of the Purchaser and of third parties.

(d), Notwithstanding the retention by the Seller of legal title to the Goods, risk in the Goods shall pass to the Purchaser according to condition 2 (b)

(e), Subject to Condition 3(c), the Purchaser may exercise its right to sell the Goods in the usual course of the Purchaser's business but such right:

(i) may be revoked at any time by the Seller giving notice to that effect if the Purchaser is in default for longer than seven days in the payment of any sum whatsoever due to the Seller (whether in respect of the Goods or of any other Goods or services supplied at any time by the Seller to the Purchaser or for any reason whatsoever) or if the Seller has bona fide doubts as to the solvency of the Purchaser and (ii) shall automatically cease if a receiver, manager or administrator is appointed over the assets, undertaking or property of the Purchaser, or a winding up or administration order against the Purchaser is made or petitioned or order in bankruptcy against the Purchaser's presented or made, or the Purchaser into voluntary liquidation (otherwise than for the purposes of reconstruction or amalgamation while solvent) or calls a meeting of or makes arrangements or compositions with creditors.

(f), Upon the determination of the Purchaser's rights of sale under Condition (c) (ii) above, the Purchaser shall place the Goods at the disposal of the Seller (who shall be entitled to enter any premises of the Purchaser for the purpose of removing the Goods and to remove the Goods from the said premises) and/or, as the case may be, pay to the Seller the proceeds then held by the Purchaser as trustee for the Seller in accordance with Condition 3(c).

#### 4. Performance

Unless any performances figures, tolerances or characteristics have been specifically and expressly warranted by the Seller in writing, the Seller shall be under no liability whatsoever for any failure to attain such figures whether attributable to the Seller's negligence otherwise.

#### 5. Confidentiality

Both the Seller and the Purchaser, shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third party, any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the Goods and the Order.

#### 6. Sale of Goods and Supply of Service Act 1980.

Except in the case of a contract for the international sale of goods (as defined in the Sale of Goods and Supply of Services Act 1980 (the "Act")) no statement contained in these Conditions or on the goods or on a container bearing the goods shall in any way prejudice the contractual rights which the Purchaser enjoys by virtue of Section 10 of the Act save to the extent permitted by Section 22 of the Act.

#### 7. Payment and Set Off

(a), Unless otherwise agreed, payment for Republic of Ireland deliveries shall be due 30 days from date of invoice. The Seller reserves the right to charge interest before and after any judgement at 2% per month on any sum outstanding after the due date and to cancel the order or suspend any further deliveries.

(b), Payments for exports from the Republic of Ireland shall be made in the Republic of Ireland through an irrevocable unconditional Letter of Credit established in favour of the Seller and confirmed by a Dublin Clearing Bank. The Letter of Credit shall (i) have an initial validity equal to the deliver period plus one month, (ii) permit part shipments and (iii) provide for the release on each shipment of 100% of the contract thereof. No liability to deliver Goods shall arise before the Seller receives such a Letter of Credit.

(c), Any discounts specified by the Seller shall apply only where payment is received as indicated above. Payment shall not be withheld on account of any claim by the Purchaser against the Seller. The Seller reserves the right to suspend deliveries where payment for any order related or otherwise, has not been made by the due date and remains outstanding.

(d), If at any time sum of money becomes payable by the Seller to the Purchaser under or in connection with the contract or any breach thereof by the Seller the Seller shall be entitled, in addition to any other right of set off conferred by law, to set off against such sum any amount then due, or which may at any time thereafter become due, to the Seller from the Purchaser under the contract or any other contract order to transaction between the Seller (or any such other company) and the Purchaser.

## 8. Description and Data

(i) All specifications, drawings and particulars of weights, dimensions, capacity or other details provided by the Seller are intended to give a general idea of the Goods but will not form part of the Contract.

(ii) If the description of any Goods in any correspondence, leaflet, invoice or the catalogue varies from that of the manufacturer's description, the manufacturer's description will be deemed to be the correct description and shall take the precedence over the Seller's description. The manufacturer's description is available from the Seller on request, if provided by Seller's manufacturer. Goods will be supplied to the manufacturer's current specification and finish. The description of the Goods has been given by way of identification only and the use of such description shall not constitute a sale by description.

## 9. Warranty and Warranty Period

(a), Any defects which under proper use appear in the Goods within the warranty period as provided in Condition 9 (b) will be made good by the Seller either by repair or, at its opinion, by replacement provided that the Goods or the defective parts thereof are returned to Seller following the RMA Procedure as described in Condition 9 (c), within the warranty period. Software programs are supplied on the strict understanding that Seller does not warrant their functions to be free from defects or errors. The Seller's sole obligation and Purchaser's sole remedy under this provision is limited to the cost of repair or replacement of the Goods supplied irrespective of the nature of the claims, whether in contract, tort or otherwise.

(b) Unless otherwise specified, the Seller grants a 12-month product warranty period to its Purchaser. The limitation period shall commence upon delivery of the Goods to the Purchaser in accordance with Condition 2(b) or upon a delay in acceptance by the Purchaser. In the event that a manufacturer of goods grants a warranty for a longer period, the Seller will pass this extended warranty on to the Purchaser at the Purchaser's request, subject to the manufacturer's agreement.

(c), Product returns shall follow Seller's RMA-procedure at the time of the return. No return of Products shall be accepted by the Seller without a Return Material Authorization ("RMA") Number, which may be issued by the Seller in its sole discretion. Returned Products must be packaged in a manner that the product cannot be damaged in any way and this is solely the responsibility of the Purchaser. All Products for return shall be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products. Products not eligible for return shall be returned to the Purchaser, freight collect

(d), This warranty is provided by Seller and accepted by Purchaser in substitution for all express or implied representations conditions or warranties, statutory or otherwise, as to the state quality fitness for purpose or performance of the Goods (or any materials used in connection therewith) or the standard of workmanship and all such representations conditions and warranties are hereby excluded to the greatest extent permitted by law.

(e), The Seller shall not be liable in any way whatsoever whether in contract, in tort, in misrepresentation or under statute or common law or otherwise for any consequential or other loss, damage or injury however caused and whether caused by Seller's negligence which may arise out of or in connection with the supply of the Goods to the Purchaser except for liability which for death or personal injury arising from Seller's negligence.

(f), This warranty does not apply to Goods which have been subject to misuse (including static discharge), neglect, accident or modification, or which have been soldered or altered during assembly and are not capable of being tested.

#### 10. Limitation of Liability

(a) Save in the case of personal injury or death caused by the negligence or wilful misconduct of the Seller, the Seller shall not be liable in contract, tort (including negligence on the part of the Seller), breach of statutory duty or otherwise for any loss, injury, destruction or damage suffered by the Purchaser whatsoever or howsoever arising out of or in connection with the supply of Goods by the Seller.

(b), If for any reason the provisions of Conditions 9(d), 10(a) and 15(a) are of no effect in respect of a claim against the Seller, the Seller's liability in respect of that claim shall in no event exceed the purchase price of the Goods subject to the claim and will be maximum €50,000.

(c), The Seller accepts no liability whether in contract, tort (including negligence on the part of the Seller), breach of statutory duty or otherwise howsoever and whatsoever the cause thereof (i) for any loss of use, business profits, contracts revenues or anticipated savings or (ii) for any special, consequential or indirect loss or damage of any nature whatsoever.

(d), No liability whatsoever shall be incurred by the Seller in respect of any representation made by the Seller or his agents to the Buyer or his agents before the contract was made where such representation related or referred in any way to (i) the correspondence of the Goods to any description (ii) the quality of the Goods or (iii) the fitness of the Goods for any purpose whatsoever.

#### 11. Limitations of Use

The Goods sold by the Seller are intended to be used only for the purposes specified by the respective manufacturer. These purposes as a rule do not include the use of the Goods in life-preserving or supporting systems in connection with nuclear materials or for any other purposes where a failure of the Goods reasonably be expected to result in an injury to life, body, or health or to unusually high pecuniary losses. In the event that the Purchaser nevertheless uses or sells on any Goods purchased from and/or programmed by the Seller for such purposes, the Purchaser shall do so at its own risk and sole responsibility. The Purchaser herewith indemnifies the Seller and respective manufacturer in full on demand against all claims, and against all legal actions, in connection with the use of Goods for such purposes, including the costs incurred for legal representation.

#### 12. Force Majeure

The Seller shall have no liability in respect of failure or delay in delivery or for non-performance in whole or in part of its obligations under the contract due to any cause outside the Seller's control or outside the control of the Sellers' suppliers including, but not limited to, war (whether an actual declaration thereof is made or not), insurrection, terrorist attack, riot or other act of civil disobedience, acts or omissions of the Purchaser or a third party, acts of any governmental, official or military authorities, delays in transport, changes of law, labour disputes, strikes, embargoes, natural disasters, shortage of labour and Goods (allocation), fuel, raw materials, or machinery or technical failure. In any such event, the Seller may,

without liability, cancel or vary the terms of a contract including but not limited to, extending the time for performing the contract for a period of at least equal to the time lost by reason of such causes.

### 13 . Price Variation

The Seller reserves the right to increase the price of Goods in proportion to any increase of costs the Seller between the date of acceptance of the order and the date of delivery (including without limitation costs relating to exchange rates, labour, materials, transport, and taxes). The Seller also reserves the right to increase the price of Goods where the increase is due to any act or default of the Purchaser, including without limitation the cancellation by the Purchaser of part of any order or no adherence to agreed call off or schedule delivery arrangements.

### 14. Storage

When delivery is delayed for reasons attributable to the Purchaser or its agents, (a) storage and other additional costs will be charged to the Purchaser, (b) the Goods will be at the Purchaser's risk from the date of commencement of such delay, (c) the original delivery date shall be the date of commencement of the guarantee and (d) the Seller may invoice the price and the original delivery date.

### 15. Intellectual Property Rights

(a), The sale of the Goods and the publication of any information or technical data relating thereto does not imply, and the Seller gives no warranty or Condition whether expressed or implied by statute, at common law or otherwise as to, freedom from infringement of the patent, registered design, trademark, copyright or other intellectual property rights of third parties (whether arising or created before or after the date of delivery of the Goods) ("IPR") in respect of the Goods or any particular application thereof or any method in which the Goods are used or disposed of or any combination of the Goods with or into any other product (whether or not supplied by the Seller), whether or not that application, method or combinations is the only application, method or combination in which the Goods can be disposed of or used.

(b), If an order for Goods include IPR such Goods are sold by the Seller to the Purchaser subject to the copyright and user license, the terms and Conditions of which are set forth in the licence agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or licence to use any IPR in any manner or for any purpose not expressly permitted by such licence agreement.

(c), The Purchaser warrants that any design and specifications supplied or specified by it to the Seller will not involve the infringement of any IPR in the manufacture and sale of the Goods by the Seller.

(d), The Purchaser undertakes to indemnify and keep indemnified the Seller against all royalties, claims, actions, demands, proceedings, losses and costs in connection with any infringement or alleged infringement of any IPR arising out of or in connection with the matters described in paragraphs (a) and/or (b) above.

### 16. Export Control Regulations

(a), The Seller shall in no circumstances be liable for any damage, loss or claim howsoever occasioned by an act, or omission on the part of the Purchaser in contravention of any provisions (statutes, ordinances, directives, regulations, administrative acts) issued by the United States Government, the countries of domicile of the contracting parties and the European Union concerning the export of Goods, services or technologies.

(b), It is the Purchaser's responsibility to inform itself about those provisions, to comply with them, and if necessary, to apply for and obtain the relevant export, re-export or import license itself.

(c), Any Goods supplied by the Seller whose export from the Republic of Ireland is restricted by any aforementioned regulations shall not be exported by the Purchaser without the prior approval of the relevant authorities concerned with the administration of such regulations.

#### 17. Cancellations and Returned Good,

(a), Notwithstanding any provision of these Conditions to the contrary, order for special, customised, value added and other non-standard Products, including products to be assembled in kit form, products of manufacturers which do not appear on the Sellers' list of products, work-in-progress and products otherwise identified by the Seller as "NCNR" or "Non-Cancellable and Non-Returnable", shall not be capable of cancellation and/or return ("Non-Standard Products"). If the Seller agrees to accept cancellation or part cancellation of an order of standard products a charge of 20% of total order price will be made.

(b), No returns are permitted, without the Seller's previous agreement.

(c), Product returns shall follow the Seller's RMA procedure as described in 9(c), at the time of return.

#### 18. Termination /Effect of Termination

(a) Where the Purchaser commits any breach of these Conditions or suffers distress or execution or becomes insolvent or commits an act of bankruptcy or enters into any arrangement or composition with his creditors or goes or is put into liquidation (other than solely for amalgamation, or reconstruction while solvent) or if a receiver or administrator is appointed over any part of the Purchaser's business, the Seller may without prejudice to any rights which may have accrued or which may accrue to it terminate the contract summarily by written notice.

(b) All obligations under these Conditions which by their nature extend beyond termination will survive termination and remain in effect, including without limitation: (i) all monetary obligations of either party to the other under the Conditions; and (ii) Purchaser's obligation to complete the purchase and pay for all Goods ordered under the Conditions.

#### 19. Data Protection

Personal data used in connection with the business relationship is stored and processed by the Seller, to the extent necessary for business purposes, in accordance with applicable statutory provisions.

#### 20. Law

Any question relating to any quotation or any contract subject to these Conditions or agreed amendment of these Conditions shall be governed by and construed in all respects in accordance with the laws of Ireland and the parties irrevocably submit to the exclusive jurisdiction of the courts of Ireland. The terms and Conditions set out in the United Nations Convention on Contracts for the International Sale of Goods are hereby expressly excluded.

#### 21. Severability

If for any reason any provision of these Conditions shall be held by a Court to be void or of no effect or invalid the other provisions hereof shall not be affected thereby and shall continue in full force and effect.