



# Lamina Dielectrics Ltd

## CONDITIONS OF SALE (AUGUST 1994)



1. **General**
  - (a) These conditions supersede all prior representations or arrangements, and contain the entire arrangement between the parties in connection with the products (unless otherwise stated on Seller's order confirmation). All other terms and conditions, express or implied, are excluded. None of the Seller's employees or agents has authority to modify or supplement these conditions or to accept any order except on Seller's official sales forms.
  - (b) Nothing in these conditions shall restrict the statutory rights of a buyer who deals as a consumer.
  - (c) References to the products include materials of the Buyer once processed by the Seller and all product packaging. If Seller has not issued an order confirmation, "Seller's order confirmation" means any document issued by Seller indicating the terms on which the products are supplied.
  - (d) Subject to the provisions of this contract, terms defined in the 1980 edition of Incoterms have the same meaning when used in these conditions.
2. **Delivery**
  - (a) Delivery or despatch dates quoted or requested are given by Seller in good faith but are not guaranteed unless stated so to be on Seller's order confirmation.
  - (b) Delivery shall be made to the place(s) and by the method(s) specified on Seller's order confirmation (or if none, ex-works). Buyer is responsible for un-loading. Buyer's or its carrier's receipt shall be conclusive evidence of delivery.
  - (c) Packaging is included in the price and is not returnable unless otherwise stated on Seller's order confirmation.
  - (d) Buyer shall accept manufacturing tolerances accepted in the trade, and weights or quantities varying by not more than 10% from the contract weight or quantity, and shall pay pro for the actual weight or quantity delivered. The weight or quantity stated on Seller's invoice shall be conclusive evidence of the amount delivered except in cases of manifest error.
  - (e) Save for the purposes of Clause 3(e), 6(b) and 7, each delivery shall be treated as a separate contract, and partial deliveries are permitted unless otherwise stated on Seller's order confirmation. Accordingly, failure to make any particular delivery, or breach of contract by Seller relating thereto, shall not affect any remaining deliveries.
  - (f) Buyer shall take delivery of the products by any date quoted by Seller or requested by Buyer (if none) within a reasonable time. Seller may deliver early where reasonable. Buyer shall be responsible for all storage and other costs relating to Buyer's failure to comply with the contract.
  - (g) Buyer shall promptly supply all information and assistance required for Seller to execute Buyer's order.
  - (h) A carrier's proof of delivery, a warehouse receipt, a receipted bill of lading or way bill is conclusive evidence of delivery.
  - (i) Seller undertakes to obtain any licence(s) required for the export of the products from the UK by the Seller. Buyer undertakes to obtain any licence(s) required for the import of the products from the UK by the Buyer. Buyer undertakes to comply strictly with the terms of any such licence(s) and will indemnify the Seller against any breach of such terms by the Buyer, its servants or agents. Where delivery by the Seller is to be made outside the UK, any failure by Buyer to obtain any such licence shall, unless due to any act or omission of the Buyer, be treated as circumstances beyond the reasonable control of the Seller for the purposes of Clause 5(a) below. Seller does not warrant that products sold to the home market will be eligible for export licences to any other destination and it is for the Buyer to make enquiries as to the requirement for any such licences. Buyer shall obtain and comply with all other necessary licences, permits and consents.
  - (j) Buyer shall fully respect any national security marking or classification applying to any product and shall comply with any directions of the competent UK authorities as to the use, storage, transportation or disposal of any product to which such marking or classification may apply.
3. **Price**
  - (a) Unless otherwise stated on Seller's order confirmation, prices are ex-works and exclusive of VAT and all other duties, fees or taxes. All sums due to Seller shall be paid in the currency and to the address stated on Seller's order confirmation, or such other address as Seller may require.
  - (b) Unless otherwise stated on Seller's order confirmation, payment is due 30th day of the month following date of invoice, but Seller may require security for payment before despatch in the circumstances described in Clause 6(c).
  - (c) Where prices are quoted in currencies other than sterling, Buyer shall compensate Seller for any currency losses suffered by Seller as a result of Buyer's failure to pay for the products on the date specified in Clause 3(b).
  - (d) Unless prices are stated to be fixed on Seller's order confirmation, Seller may increase prices in accordance with increases in Seller's costs and/or general price increases occurring after the date of Seller's order confirmation but before despatch. Buyer shall pay for any increases in delivery costs after the date of Seller's order confirmation.
  - (e) In the circumstances described in Clause 6(c), all unpaid balances owing to Seller from Buyer shall become a debt immediately due and payable to Seller, irrespective of whether property in the products has passed to the Buyer.
  - (f) Time of payment is of the essence of the contract. Seller may charge interest at 4% above Barclays Bank plc's base rate per annum for the time being (to accrue from day to day) on any sum owed to Seller under the contract which is not paid on the date specified in Clause 3(b), after as well as before any judgement. Buyer may not withhold payment or make any set-off on any account.
  - (g) Seller may appropriate sums received from Buyer against any debt due to Seller from Buyer (under this or any other contract), irrespective of any purported appropriation by Buyer.
4. **Seller's Warranty**
  - (a) Seller warrants that upon delivery the products:
    - (i) are sold with good title;
    - (ii) comply with Seller's current published product data sheets (or, where there are none, that they comply with any specification appearing on Seller's order confirmation and are made with sound materials and workmanship to normal standards accepted in the industry) in all material respects.

**SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE FIT FOR ANY PARTICULAR PURPOSE OR INTENDED USE BY BUYER, AND IT IS FOR BUYER TO SATISFY ITSELF THAT THE PRODUCTS ARE SO FIT.**
  - (b) Seller's Warranty is given on the condition that any instructions of Seller relating to the products are strictly complied with.
  - (c) Buyer shall examine the products as soon as reasonably practicable after delivery. Buyer shall immediately notify Seller of any incomplete or failed delivery, loss or damage during carriage or if the products fail to comply with Seller's Warranty. Unless Buyer so notifies Seller within 30 days after the invoice date Buyer shall (subject to Clauses 4(f) and 8(a)) be treated as having waived all claims connected with the matter which should have been notified.
  - (d) Subject to notification within the period required by Clause 4(c), if it is shown to Seller's reasonable satisfaction that the products fail materially to comply with Seller's Warranty, Seller shall be given a reasonable opportunity to correct such failure, and, if Seller does not or is unable to do so, Seller will at Buyer's option either refund the price paid by Buyer (or, if the products have depreciated for reasons other than Seller's default or have been used or put into process, a reasonable part of the price), or replace the products (if reasonably practicable) within a reasonable time, free of charge (excluding materials not supplied by Seller).

**SUCH CORRECTION, REFUND OR REPLACEMENT SHALL, SUBJECT TO CLAUSE 4(f) BELOW AND TO CLAUSE 8(a), BE SELLER'S SOLE LIABILITY IN RELATION TO ANY SUCH FAILURE.** Replacement products are covered by these conditions, including Seller's Warranty. Products which are alleged not to comply with the contract shall as far as possible be preserved for inspection by Seller, and if replaced or if a refund is made shall be returned to Seller (at Seller's cost) if Seller reasonably so requests.
  - (e) Clause 4(a)(ii) does not apply to seconds, remainder stock or samples or to goods sold as obsolete or sub-standard, nor does it apply to the extent that any alleged defect shall be attributable to any material of the Buyer furnished to the Seller for processing or incorporation into the products, and Seller shall be under no duty to examine any such material prior to such processing or incorporation.
  - (f) Seller does not exclude any liability which cannot be excluded as between Buyer and Seller under any United Kingdom legislation.
  - (g) In any circumstances described in Clause 4(f) Buyer shall promptly notify Seller of any relevant claim, shall comply with the Seller's reasonable requirements to minimise liability and/or avoid further liability, and shall allow the Seller conduct of any action and/or settlement negotiations.
5. **Force Majeure**
  - (a) Seller shall not be liable for any failure to comply with the contract related to any circumstances whatever (whether or not involving Seller's negligence) which are beyond Seller's reasonable control and which prevent or restrict Seller from complying with the contract.
  - (b) Seller may where reasonable in all circumstances (whether or not involving Seller's negligence) without liability suspend or terminate (in whole or in part) its obligations under the contract, if Seller's normal means is materially impaired.
6. **Termination and Suspension**
  - (a) Except where Buyer has caused or contributed to any delay, Buyer may (as Buyer's sole remedy, without affecting the balance of the contract quantity) terminate the contract by notice to Seller in respect of any instalment of products which is not dispatched
    - (i) within 10 days of any date stated to be "guaranteed" on Seller's order confirmation; or
    - (ii) within 90 days after any date quoted on Seller's order confirmation (unless the goods have been specially manufactured or adapted for Buyer).
  - (b) Seller may (without prejudice to its other rights or remedies) terminate or suspend Seller's performance of the whole or any outstanding part of the contract in the circumstances described in Clause 6(c). Seller may also suspend deliveries while investigating any claim relating to prior shipments (under any contract) of products.
  - (c) The relevant circumstances are if:
    - (i) Buyer fails to take delivery of or to pay for the products on the date required under Clause 2(f) or 3(b) respectively, or breaches any other term of the contract; or
    - (ii) Buyer becomes bankrupt or insolvent or if a receiver or encumbrancer takes possession of any material part of Buyer's assets, or Buyer suffers any foreign equivalent of the foregoing; or
    - (iii) Seller has reasonable grounds for suspecting that an event in Clause 6(c)(ii) has occurred or will occur, or that Buyer will not pay for the products on the due date, and so notifies Buyer.
  - (d) If Buyer provides Seller with security for the contract price, reasonably acceptable to Seller, within 3 working days after a notice has been given under Clause 6(c)(iii), Seller shall withdraw the notice.
7. **Risk and Title**
  - (a) (i) All material of the Buyer which may be consigned to Seller's premises for processing shall at all times be at Buyer's risk, and Seller shall not be liable for loss or damage thereto, whether or not involving negligence by Seller.  
(ii) In addition to any general lien, Seller shall, in the circumstances set out in Clause 6(c) have a lien on all goods of the Buyer in its possession (even if these shall have been wholly or partly paid for) in satisfaction of the whole or part (as the case may be) of the unpaid price of any product delivered to the Buyer under the same or any other contract.
  - (b) Risk in the product shall pass to Buyer upon delivery.
  - (c) Except insofar as products are comprised solely of material of the Buyer possessed by Seller, Seller shall retain ownership of the products until:
    - (i) Seller has received payment in full for the products; or
    - (ii) Subject to Clause 7(d) Buyer mixes or processes the products so that they lose their identity or are irrecoverably incorporated in or mixed with other goods; or
    - (iii) Buyer sells them at arm's length in good faith to an unrelated third party.
  - (d) As a separate and independent condition, Buyer agrees that in the circumstances described in Clause 7(c)(ii), the resulting product ("the Downstream Product") shall be Seller's property until the conditions in Clause 7(c)(i) or (ii) have been met, unless the value of the other goods (as measured by the price charged to the Buyer or, if none, the direct factory cost to the Buyer of their manufacture) exceeds the contract price for the products.
  - (e) Until ownership of the products or Downstream Products passes to Buyer, Buyer shall insure them against all usual risks to full replacement value, shall sell, use or part with possession of them only in the ordinary course of trading and shall where reasonably possible keep each delivery separate and clearly identified as Seller's property. In the circumstances described in Clause 6(c), Buyer's right to sell, use or part with possession of the products or Downstream Products shall terminate, and Seller may recover and/or sell the products or Downstream Products any may enter Buyer's premises for that purpose, without prejudice to Seller's other remedies. If Seller recovers and/or sells the Downstream Products, any excess of the value of the Downstream Products (as reasonably estimated by Seller) over any amounts due to Seller under the contract plus Seller's costs of recovery and disposal, shall be paid to Buyer. This obligation shall survive termination of the Contract.
8. **Intellectual Property; and Third Party Claims**
  - (a) Seller will defend Buyer against any third party claim made against Buyer in the United Kingdom alleging that the products as such, in the original state sold by Seller, infringe any patent, registered design, trademark, trade-name or copyright effective in the United Kingdom, and Seller will pay any damages and costs finally awarded against Buyer in the United Kingdom in respect of such a claim. Seller may modify the products so that they cease to infringe so long as Buyer is not substantially prejudiced by the modification.
  - (b) Clause 8(a) shall not apply to the extent that the products are manufactured to Buyer's specification or from Buyer's materials or as provided in Clause 8(d)(i) or in respect of any use of the products not contemplated by Seller at the date of Seller's order confirmation.
  - (c) Buyer shall not use any trademarks or tradenames applied to or used by Seller in relation to the products in any manner not approved by Seller.
  - (d) **BUYER SHALL INDEMNIFY SELLER AGAINST ANY LIABILITY INCURRED BY SELLER:**
    - (i) AS A RESULT OF INCORPORATING PROPERTY OF BUYER IN THE PRODUCTS OR APPLYING ANY TRADEMARK, TRADENAME OR DESIGN TO THE PRODUCTS ON BUYER'S INSTRUCTIONS, OR COMPLYING WITH ANY OTHER INSTRUCTIONS OF BUYER RELATING TO THE PRODUCTS; AND
    - (ii) IN RELATION TO ANY THIRD PARTY CLAIMS ARISING FROM THE USE MADE OF OR DEALINGS BY BUYER IN THE PRODUCTS (IRRESPECTIVE OF WHETHER THEY INVOLVE THE NEGLIGENCE OF SELLER, ITS AGENTS OR EMPLOYEES), EXCEPT AS PROVIDED IN CLAUSE 8(a) and 4(f) OR IF ARISING FROM SELLER'S WILFUL DEFAULT.
  - (e) The indemnified party shall promptly notify the other of any relevant claim, shall comply with the other's reasonable requirements to minimise liability and/or avoid further liability and shall allow the other conduct of any action and/or settlement negotiations, on reasonable terms.
9. **ADVICE AND ASSISTANCE**

**SELLER SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF THE NEGLIGENCE OF SELLER, ITS AGENTS OR EMPLOYEES, FOR ANY REPRESENTATIONS, ADVICE OR ASSISTANCE GIVEN (UNDER THIS CONTRACT OR OTHERWISE, AND WHETHER BEFORE OR AFTER THE DATE OF THE CONTRACT) BY OR ON BEHALF OF SELLER IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT, UNLESS AND THEN ONLY TO THE EXTENT THAT SELLER HAS MADE SUCH REPRESENTATIONS, AND/OR AGREED TO PROVIDE SUCH ADVICE OR ASSISTANCE, FOR A FEE UNDER A SEPARATE WRITTEN CONTRACT WITH BUYER.**
10. **LIMITATION OF LIABILITY**
  - (a) **WITHOUT PREJUDICE TO ANY OTHER LIMITATION OF SELLER'S LIABILITY (WHETHER EFFECTIVE OR NOT):**
    - (i) **IN NO CIRCUMSTANCES WHATSOEVER SHALL SELLER BE LIABLE (IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF ANY NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF SELLER OR ITS EMPLOYEES OR AGENTS) FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES (INCLUDING LOSS OF GOODWILL, BUSINESS OR ANTICIPATED SAVINGS) LOSS OF PROFITS OR USE, OR (SUBJECT TO GOODWILL, BUSINESS OR ANTICIPATED SAVINGS) LOSS OF PROFITS OR USE, OR (SUBJECT TO CLAUSES 4(f) AND 8(a)) ANY THIRD PARTY CLAIMS, IN CONNECTION WITH THE PRODUCTS "UNDER THE" CONTRACT.**
    - (ii) **EXCEPT AS PROVIDED UNDER CLAUSES 4(f) AND 8(a), SELLER'S TOTAL AGGREGATE LIABILITY IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT (IN CONTRACT, TORT OR OTHERWISE AND WHETHER OR NOT RELATED TO ANY NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF SELLER OR ITS EMPLOYEES OR AGENTS), IS LIMITED TO THE CONTRACT PRICE, EX-WORKS AND EX-VAT.**
  - (b) **WITHOUT PREJUDICE TO SELLER'S WARRANTY, BUYER'S SOLE REMEDY SHALL BE IN DAMAGES.**
  - (c) **SELLER'S WARRANTY AND BUYER'S REMEDIES UNDER CLAUSE 4(f) AND CLAUSE 8(a) ARE IN SUBSTITUTION FOR ANY OTHER WARRANTIES, OBLIGATIONS, REPRESENTATIONS, LIABILITIES, TERMS OR CONDITIONS (WHETHER THEY ARE EXPRESS OR IMPLIED, OR ARISE IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF THE NEGLIGENCE OF SELLER, ITS EMPLOYEES OR AGENTS) IN CONNECTION WITH THE PRODUCTS (INCLUDING WITHOUT LIMITATION, ANY RELATING TO MERCHANTABILITY, FITNESS FOR PURPOSE, CONFORMITY WITH DESCRIPTION OR SAMPLE, CARE AND SKILL OR COMPLIANCE WITH REPRESENTATIONS, BUT EXCLUDING IMPLIED STATUTORY WARRANTIES RELATING TO TITLE), AND ALL SUCH WARRANTIES, OBLIGATIONS, REPRESENTATIONS LIABILITIES, TERMS OR CONDITIONS ARE EXPRESSLY EXCLUDED.**
  - (d) **WITHOUT PREJUDICE TO CLAUSE 4(c), NO ACTION MAY BE BROUGHT AGAINST SELLER IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT UNLESS PROCEEDINGS ARE ISSUED AGAINST SELLER WITHIN TWO YEARS AFTER BUYER BECAME OR OUGHT TO HAVE BECOME AWARE OF THE CIRCUMSTANCES GIVING RISE THERETO.**
  - (e) **THIS CLAUSE 10 APPLIES NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM OF THE CONTRACT BY SELLER.**
11. **Health and Safety at Work**
  - (a) Buyer shall ensure that all products are safely and lawfully received, stored and maintained, used or applied by Buyer and that Buyer obtains relevant information in Seller's possession relating thereto.
  - (b) Buyer shall ensure that all appropriate safety information (whether supplied by Seller, Buyer or others) is distributed and drawn to the attention of customers and all others (including Buyer's employees) who required it for the safe handling or use of the products.
12. **Miscellaneous**
  - (a) The contract may not be assigned by Buyer without Seller's prior written consent.
  - (b) Notices must be in writing to Seller's or Buyer's address and are deemed delivered on the first working day after sending by hand or (subject to confirmation of transmission) by facsimile, or, within the UK, on the third working day after being placed prepaid in the first class post to Buyer's or Seller's UK address. Qualified acceptances by Buyer on delivery notes shall not constitute notice of any claim or acceptance by Seller of any such qualification.
  - (c) No failure by Seller to enforce any provision of this contract shall be construed as a release of its rights relating thereto or to sanction any further breach.
  - (d) If any provision of the contract is found to be invalid or unenforceable it shall have effect to the maximum extent permitted by law, or, if not so permitted, shall be deemed deleted.
13. **Law**

This contract shall be governed by and construed in accordance with the law of England. Buyer hereby agrees, for Seller's exclusive benefit, that the English courts shall have sole jurisdiction to hear all claims or proceedings connected with the products or the contract. Seller may nevertheless bring claims in any other courts of competent jurisdiction.



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