

# **TraX Interconnect (Pty.) Ltd. - Terms and Conditions of Sale**

In these terms and conditions the words "we", "us" and "our" all mean TraX Interconnect (Pty.) Ltd..

## **1 SOLE CONDITIONS**

- 1.1 These conditions are the sole conditions on which we sell, and all orders are accepted and all sales and deliveries are made subject to these conditions. If not previously accepted by the Buyer, these conditions shall be deemed accepted on delivery.
- 1.2 Any conditions stipulated by the Buyer, whether in his order or before or after ordering, which are in conflict with these conditions, are expressly repudiated and shall not be binding on us, save to such an extent as we may specifically accept them in writing.

## **2 PRICES**

- 2.1 The prices of goods shall be quoted to the buyer by our duly authorised representative; provided that we shall be entitled to stipulate to any buyer that an order verbally placed by that buyer in respect of which a price has been verbally quoted by our duly authorised representative shall only be accepted by us upon the buyer placing a written order (including a faxed order) reflecting the type and quality of goods ordered and the price so quoted for such goods. The said prices include packing to our normal standards.

## **3 DELIVERY**

- 3.1 Every effort will be made to deliver the goods promptly, but time shall not be of the essence and failure to deliver promptly shall not involve us in any liability. Without detracting in any way from the foregoing generality, we shall not be responsible for delays in delivery or for nondelivery resulting from breakdown of machinery, strikes, labour disputes, war, riot, civil commotion, via major, casus fortuitus, acts of God, acts of terrorists, shortage of components or materials, delays in delivery by our suppliers, transport delays, Government regulations or any other cause beyond our control.
- 3.2 The buyer shall not be released from his order by reason of any delay, unless the delay is unduly prolonged, in which case the buyer or we ourselves shall be entitled to cancel the order or the balance of the order without liability to the other.
- 3.3 We shall be entitled to make deliveries in parts or instalments, and the buyer shall be obliged to accept and pay for any part or instalment so delivered.
- 3.4 Delivery of goods shall be given and taken:-
  - (a) In the event of delivery of goods being effected by rail or air transport, upon acceptance of the goods for carriage by the carrier;
  - (b) In the event of our effecting delivery of goods by road transport, upon arrival of the goods at destination and accordingly off loading of the goods, including off loading effected by our employees or the employees of our agents, shall be effected at the sole risk of the buyer;
  - (c) In the event of the buyer collecting goods from our premises using its own or its agent's transport, upon collection of the goods at our premises. Such collection shall be entirely at the buyer's risk and the buyer shall be responsible for all damage of whatsoever nature caused as a result of or during such collection. The buyer shall be responsible for loading the goods on to the transport, provided that we may, if so requested, assist the buyer with such loading but only at the sole risk of the buyer.

The cost of delivery shall be for the buyer's account and is not included in the price of the goods unless otherwise agreed by us prior to or at the time of acceptance of the buyer's order.

## **4 PAYMENT**

- 4.1 Unless the terms of payment are specifically stipulated by us prior to or at the time of acceptance of your order, as being C.O.D. or cash in advance (which we reserve our rights to do), the terms for payment shall be full payment without retention, deduction or setoff to us within 30 (thirty) days from date of statement. We reserve the right to withhold the execution of orders where any portion of an account has been outstanding in excess of 60 (sixty) days. Amounts outstanding in excess of 30 (thirty) days from date of statement will attract interest from the date of expiry of such 30 (thirty) day period to date of payment at the rate of 2,50 (two comma five per centum) per month or such other rate of which we may advise you (which we reserve our right to do) prior to or at the time of acceptance of your order.

## **5 SHORTAGE OR DAMAGE**

- 5.1 No claim for shortage or damage will be considered and we shall not be liable unless the claim is received by us within 15 (fifteen) days from the date of actual receipt of the goods by the buyer.

## 6 WARRANTY

- 6.1 We warrant to and in favour of the buyer that the goods will be free from defects in material and workmanship for a period of NINETY (90) days calculated from the date of delivery of the goods.
- 6.2 Any goods falling within the provisions of our said warranty shall, at our sole option, be repaired or replaced, in either case free of charge; provided that the buyer both notifies us of the allegedly defect and delivers the allegedly defective goods to our factory, all within the said NINETY (90) days warranty period.
- 6.3 The buyer shall be responsible for the cost of the aforesaid delivery of the allegedly defective goods to our factory as well as the cost of redelivery of such goods to the buyer which redelivery shall be effected in accordance, mutatis mutandis, with the delivery provisions of 3.4 above.
- 6.4 Our said warranty is given in lieu of all other warranties, guarantees, representations, and obligations, whether express or implied and, if implied, whether by law or otherwise, which warranties, guarantees, representations and obligations are hereby expressly excluded.
- 6.5 Notwithstanding the provisions of 13.1 below, no agent or representative of ours has authority, express or implied, to vary the terms of this clause 6 of these terms and conditions.

## 7 LIMITATION OF LIABILITY

- 7.1 Under no circumstances shall we be liable for loss of the buyer's profit or for any consequential or indirect damages; and under no circumstances shall we be liable for any claim in excess of the purchase price of the goods.

## 8 BUYER'S WARRANTY AND INDEMNITY

- 8.1 The buyer warrants in our favour that any plan, drawing, design, description or specification provided by the buyer to us and in accordance with which any order is executed by us shall not infringe the rights of any third party under any trade mark, trade name, copyright, design or patent. The buyer hereby indemnifies us and holds us harmless against all actions, claims for damages, costs, penalties or otherwise, arising out of any breach by the buyer of the aforesaid warranty.

## 9 SPECIFICATION CHANGES: ORDER CANCELLATIONS

If at any time after our acceptance of any order for goods:-

- 9.1 the buyer alters in any way the specification of such goods provided to us by the buyer we shall be entitled to levy a charge on the buyer in addition to the price of such goods, which charge shall be reflected on the buyer's statement, shall be payable in the same manner and within the same period mutatis mutandis as payment of such goods and shall be an amount equal to the aggregate of all tooling and origination costs necessary to manufacture the goods in accordance with the specification so altered plus a percentage of the price of such goods;
- 9.2 the buyer cancels any order for goods for any reason whatever we shall, without prejudice to our other rights hereunder or at law, be entitled to recover from the buyer a proportion of the price of such goods, which proportion shall be an amount equal to a percentage of the price of such goods; which percentage of the price of such goods shall be calculated and determined in accordance with the following table:-

<b>Stage of execution of order reached at time of change in goods specification</b>	<b>Percentage of original price to be charged</b>
Originated/test tooling	Origination/test tooling price
Material cut to size	20%
Through hole plated	40%
Photo resist laminated	50%
Electroplated/etched	70%
Silk screened	80%
Final machining	100%

A certificate by any one of our directors (whose authority or capacity to sign the same need not be proved) wherein such signatory certifies the amount valid by any buyer in respect of any above stated charge shall be conclusive proof of the amount of such charge and/or the said percentage price of the goods and sufficient proof for the purpose of obtaining provisional sentence or summary judgement against the relevant buyer.

## 10 RISK AND OWNERSHIP

- 10.1 The risk in the goods shall pass to the buyer on delivery, to him, but ownership shall not pass to the buyer until the full purchase price has been paid.

**11 BUYER'S FINANCIAL POSITION**

11.1 If the buyer shall fail to pay us on the due date any sum owing by the buyer to us, or commit a breach of any other obligation owed to us hereunder, or commit an act of insolvency, or if an application for the provisional or final liquidation or judicial management of the buyer or for the provisional or final sequestration or surrender of the estate of the buyer, is commenced, or if the buyer effects or attempts to effect a compromise or composition with the buyer's creditors (other than, where the buyer is a company, for the purpose of reconstruction or amalgamation) or if we at any time otherwise have cause to be dissatisfied with the buyer's financial position we may, without prejudice to any other rights hereunder or under statute or common law, and in particular our rights under clause 4 hereof, either suspend further deliveries of goods sold by us hereunder, require payment in advance for all or any such deliveries, or terminate any sale then subsisting between us and the buyer forthwith by written notice to the buyer. We shall also have the right to demand and enforce immediate payment for deliveries of goods already made, notwithstanding any earlier agreement for credit.

**12 GENERAL**

- 12.1 No variation or addition to these terms and conditions shall be binding to us unless it is in writing and signed by our duly authorised representative.
- 12.2 In the event of our having to utilise the services of our attorneys for the collection of any monies due or the return of any goods to us by the buyer, or for any other reason arising out of these terms and conditions, then the buyer shall be liable for and herewith agrees to pay all our costs so incurred by us on the attorney and client scale, including all collection commission.
- 12.3 The buyer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction over the person of the buyer in respect of any claim that may arise directly or indirectly in connection with these terms and conditions, notwithstanding with the amount of the claim involved may exceed the limitations contemplated in Section 29(1) and 46 (2)(c) of the Magistrate's Court Act, 1944 or any statutory modification or law passed in substitution thereof, acknowledging however that we shall be entitled, but not obliged to institute any such claim in such Magistrate's Court. The buyer also hereby consents and submits himself/herself/itself to the jurisdiction of the High Court of South Africa (Cape of Good Hope Provincial Division) in respect of any claim that may arise directly or indirectly in connection with these terms and conditions and which is instituted by us in such High Court.
- 12.4 These terms and conditions shall in all respects be governed by and construed in accordance with the law of the Republic of South Africa.
- 12.5 The buyer shall not, without our prior consent, cede or assign any of its rights and/or obligations under these terms and conditions. The buyer hereby consents to any cession or assignment of all or any of our rights and/or obligations under these terms and conditions.

\_\_\_\_\_  
Signature of authorised person  
and stamp of the business

\_\_\_\_\_ Capacity

\_\_\_\_\_ Date

**FOR OFFICE USE ONLY**