



These Conditions govern the contract between us to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and supersede any previous edition of these Conditions.

1. BASIS OF CONTRACT

- 1.1 Any quotation given by us shall not constitute an offer to sell to you and unless previously withdrawn is open for a period not exceeding one month, after which time the quotation is subject to revision.
- 1.2 The Order submitted by you constitutes an offer by you to purchase Goods from us in accordance with these Conditions. You are responsible for ensuring that the items set out on your Order are complete and accurate. No Order submitted by you to us shall be deemed to be accepted by us unless or until our acceptance is confirmed in writing by our Order Acknowledgment, at which point the contract (**Contract**) between you and us shall come into existence. A list of authorised representatives is obtainable upon request.
- 1.3 The Contract constitutes the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by us, or given on our behalf which is not set out in the Contract.
- 1.4 Any samples, drawings, descriptive matter, or advertising produced by us and any descriptions or illustrations contained in our catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 1.5 To the extent that the Goods are to be manufactured in accordance with a specification supplied by you, you, shall indemnify us 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 professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of your specification. This clause shall survive termination of the Contract.
- 1.6 We reserve the right to amend any specification of the Goods if required by any applicable statutory or regulatory requirements.

2. VARIATIONS

- 2.1 No addition to or variation of these Conditions is valid unless agreed by us in writing.

3. PRICE AND PAYMENT

- 3.1 The price of the Goods shall be the price set out in our Order Acknowledgment, or, if no price is set out in it, the price set out in our published price list in force as at the date of delivery.
- 3.2 We may, by giving notice to you at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - a. any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - b. any request by you to change the delivery date(s), quantities or types of Goods ordered, or the specification; or
 - c. any delay caused by your instructions or failure to give us accurate information or instructions.
- 3.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to you in addition. Packing cases charged for will be credited in full if returned to us by you carriage paid, in good condition within 14 days from the date of invoice and the return is duly advised to us.
- 3.4 The price of the Goods is exclusive of amounts in respect of any value added tax (**VAT**). You shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 3.5 Credit Accounts: Payment shall be net cash payable within 30 days of invoice date unless agreed otherwise in writing. Failure to settle invoices within the terms stated will render all invoices due for immediate payment. Credit facilities are granted to you as a privilege and may not be construed by you as a right. The facilities may be withdrawn without notice at any time, at our absolute discretion.
- 3.6 Pro-forma: Where approved credit accounts have not been authorised, or have been withdrawn, pro-forma invoices will be issued.
- 3.7 We may invoice you for standard Goods on or at any time after the completion of delivery. Any Goods that are not standard catalogue items or are specially modified or designed to meet your requirements and are subject to scheduled batch delivery over an extended period must be paid for in full value as set out in the Order Acknowledgment. Where we agree to deliver the Goods by instalments, each instalment shall constitute a separate contract and be invoiced and paid for separately. Any delay in delivery or defect in one instalment shall not entitle you to cancel any other instalment.
- 3.8 If the total value of an Order exceeds your available credit limit with us either alone, or in combination with any other outstanding Order we reserve the right, at our sole discretion, to impose alternative payment terms as we deem fit on all of your outstanding Orders.
- 3.9 If payment is not made on the due date then without prejudice to any other right or remedy available to us we shall be entitled to cancel the Contract or suspend any further delivery to you and/or to charge you full cost of recovery of sums outstanding and interest (both before and after any judgement) on the amount unpaid at the rate of (3%) per annum above Bank base rate, from time to time from the date of invoice until payment is made in full, such interest to be compounded on a (monthly) basis.
- 3.10 You shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by you against any amount payable by us to you.

4. QUANTITIES

- 4.1 The price quoted by us for the Goods is for the stipulated quantities only and unless otherwise stated is given on an ex-works basis.

5. CANCELLATION

- 5.1 Cancellation by you: No Order for Goods manufactured to your specifications may be cancelled without our written agreement except on payment of the full costs of special

manufacture incurred up to the date of cancellation, including the cost of design work, tools, dies, special equipment etc, purchased or manufactured specifically for execution of the Order in question. Orders for our standard catalogue items may only be cancelled with our written agreement and we reserve the right to impose cancellation charges.

- 5.2 Cancellation by us: If due to a Force Majeure Event we are unable to deliver any part of your Order we shall have the right (on giving notice in writing) to cancel the undelivered balance to the Order and you shall not have any claim arising out of such inability, delay or cancellation.

6. DELIVERY

- 6.1 Where we agree to deliver the Goods to the location set out in the Order Acknowledgment or such other location as we may agree with you (**Delivery Location**), we may do so at any time after we notify you that the Goods are ready. If we have agreed that you shall collect the Goods from our premises at Dunmure Road, Bodmin, Cornwall, PL31 2QL or such other location as may be advised to you by us prior to delivery (**Delivery Location**) you shall collect the Goods from such Delivery Location within three (3) Business Days of our notifying you that the Goods are ready.
- 6.2 Delivery of the Goods shall be completed on the Goods' arrival at or collection from (as applicable) the Delivery Location.
- 6.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (as defined below) or by your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.4 Save as set out in clause 6.3 above, if we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement Goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 6.5 If you fail to take or accept (as applicable) delivery of the Goods within three (3) Business Days of our notifying you that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or our failure to comply with our obligations under the Contract:
 - a. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which we notified you that the Goods were ready; and
 - b. we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance) in respect of such storage.
- 6.6 If 10 Business Days after the day on which we notified you that the Goods were ready for delivery you have not taken or accepted (as applicable) delivery of them, we may resell or otherwise dispose of part or all of the Goods.

7. PASSING OF OWNERSHIP AND RISK

- 7.1 Risk of damage to or loss of the Goods shall pass to you at the time of delivery.
- 7.2 Title to the Goods shall not pass to you until we have received in cash or clear funds payment in full for the price of the Goods and all other Goods agreed to be sold by us to you for which payment is then due.
- 7.3 Until such time as title to the Goods passes to you, you shall:
 - a. hold the Goods on a fiduciary basis as our bailee;
 - b. store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
 - c. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - d. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - e. notify us immediately if it becomes subject to any of the events listed in clause 11.2; and
 - f. give us such information relating to the Goods as we may require from time to time, but you may resell or use the Goods in the ordinary course of your business. But shall account to us of any proceeds of sale or otherwise of the Goods including insurance proceeds.
- 7.4 If before title to the Goods passes to you, you become subject to any of the events listed in clause 11.2, or we reasonably believe that any such event is about to happen and we notify you accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require you to deliver up the Goods and, if you fail to do so promptly, we may enter your premises or any third party premises where the Goods are stored in order to recover them and you hereby license us to effect such entry.

8. QUALITY

- 8.1 We warrant that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
 - a. conform in all material respects with their description;
 - b. be free from material defects in design, material and workmanship; and
 - c. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - d. be fit for any purpose held out by us.
- 8.2 Subject to clause 8.3, if:
 - a. you give notice in writing to us during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 8.1; and
 - b. we are given a reasonable opportunity of examining such Goods; and
 - c. you (if asked to do so by us) return such Goods to our place of business at your cost, we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Any Goods which are replaced or repaired by us in accordance with this clause, shall be sent out to you at our cost.
- 8.3 We shall not be liable for Goods' failure to comply with the warranty set out in clause 8.1 in any of the following events:
 - a. you make any further use of such Goods after giving notice in accordance with clause 8.2;
 - b. the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

- c. the defect arises as a result of our following any drawing, design or specification supplied by you;
 - d. you alter or repair such Goods without our written consent;
 - e. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - f. the Goods differ from their description or specification (as applicable) as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.4 Goods may be returned to us within the warranty period which are excluded from the warranty pursuant to clause 8.3 and we shall at our discretion repair or replace defective material or workmanship as originally ordered, subject to charging you for labour or other expenditure incurred by us.
- 8.5 Except as provided in this clause 8, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.6 The terms implied by section 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.7 These Conditions shall apply to any repaired or replacement Goods supplied by us pursuant to this clause.
- 9. DAMAGE AND SHORTAGE**
- a. Notwithstanding clause 8, we accept responsibility for damage to Goods in transit to destinations specified on the Order, provided such damage is reported on the carrier's way bill, or failing that, the way bill be signed "Contents unexamined" and the damage is reported to both the carriers and ourselves within three days of delivery. You must obtain prior authorisation from us for return of Goods before despatch. We reserve the right to specify the method of packing and mode of delivery.
 - b. Claims for shortages can be recognised if made within 7 days of the delivery of the Goods to you.
- 10. INTELLECTUAL PROPERTY**
- 10.1 All Intellectual Property Rights in the Goods are vested in us.
 - 10.2 All tooling, dies and other equipment designed for the purposes of manufacturing the Goods (Equipment) are vested in us and all such items remain our property at all times whether or not a charge is made by us towards their cost. Any arrangements whereby the Intellectual Property Rights in the Equipment or design remain with you must be confirmed by us in writing.
 - 10.3 If Goods are manufactured to your design or specification you will indemnify us for all costs, in respect of any claim made against us that the Goods infringe or that their use or resale infringes the Intellectual Property Rights of any other person.
- 11. INSOLVENCY OR INCAPACITY**
- 11.1 If you become subject to any of the events listed in clause 11.2, or we reasonably believe that you are about to become subject to any of them and notify you accordingly, then, without limiting any other right or remedy available to us, we may cancel or suspend all further deliveries under the Contract or under any other contract between you and us without incurring any liability to you, and all outstanding sums in respect of Goods delivered to you shall become immediately due.
 - 11.2 For the purposes of clause 11.1, the relevant events are:
 - a. you suspend, or threaten to suspend, payment of your debts, or you are unable to pay your debts as they fall due or you admit inability to pay your debts, or (being a company) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - b. you commence negotiations with all or any class of its creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors other than (where you are a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of you with one or more companies or your solvent reconstruction;
 - c. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up, other than for the sole purpose of a scheme for your solvent amalgamation with one or more companies or your solvent reconstruction;
 - d. (being an individual) you are the subject of a bankruptcy petition or order;
 - e. a creditor or encumbrancer of yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
 - f. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you;
 - g. (being a company) a floating charge holder over your assets has become entitled to appoint or has appointed an administrative receiver;
 - h. a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
 - i. any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(a) to clause 11.2(h) (inclusive);
 - j. you suspend, threaten to suspend, cease or threaten to cease to carry on all or substantially the whole of your business;
 - k. your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy; and
 - l. (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
 - 11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 12. LIMITATION OF LIABILITY**
- 12.1 Nothing in these Conditions shall limit or exclude our liability for:
 - a. death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
 - b. fraud or fraudulent misrepresentation;
 - c. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - d. any matter in respect of which it would be unlawful for us to exclude or restrict liability.
 - 12.2 Subject to clause 12.1:
 - a. we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - b. our total liability to you 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.
- 13. FORCE MAJEURE**
- 13.1 Neither party shall 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 a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 14. ASSIGNMENT AND SUBCONTRACTING**
- 14.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.
 - 14.2 You may not assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract without our prior written consent.
- 15. NOTICES**
- 15.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
 - 15.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
 - 15.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 16. SEVERANCE**
- 16.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
 - 16.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 17. WAIVER**
- 17.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 18. THIRD PARTY RIGHTS**
- 18.1 A person who is not a party to the Contract shall not have any rights under or in connection with it. The above Conditions of Sales shall not apply to HM Government Departments' Orders.
- 19. DEFINITIONS**
- The following definitions shall apply in these Conditions:
- "Buyer", "you", "your"** means the person, Company or organisation that placed the Order under the Contract.
- "Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- "Force Majeure Event"** has the meaning given in clause 13.
- "Goods"** the Goods (or any part of them) set out in the Order.
- "Intellectual Property Rights"** means patents, rights to Inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database 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 (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.
- "Order"** means your Order for the Goods, as set out in your purchase order form or submitted by fax, e-mail or telephone.
- "Order Acknowledgment"** means the formal order acknowledgment sent by us to you.
- "us", "we" and "our"** mean FLANN MICROWAVE LIMITED, a Company incorporated in England and Wales under Company number 00570345 whose registered office is at Dunmere Road, Bodmin, Cornwall, PL31 2QL.
- 20. GOVERNING LAW AND JURISDICTION**
- The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.