

CONDITIONS OF SALE

1 Interpretation

1.1 In these Conditions:

'BUYER' means the person with whom the Seller makes a Contract in accordance with para 2.1.

'GOODS' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

'SELLER' means HERGA TECHNOLOGY LIMITED (registered in England No 00533707)

'CONDITIONS' means the standard conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

'CONTRACT' means the contract for the purchase and sale of the Goods.

'DELIVERY ADDRESS' means the address to which the Buyer requests the Seller to arrange delivery (such arrangements being made for and on behalf of the Buyer).

'WRITING' includes fax, e-mail and comparable means of communication.

'PART NUMBER' means the part number or product code for the Goods provided by the Seller in the Data Sheet.

'DATA SHEET' means the data sheet for any Goods made available by the Seller most recently before the Contract is made.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the quotation of the Seller, which is to be the sole basis for the Buyer's order. The Contract is normally made when the Buyer's order is accepted by the Seller (which will be after the Seller has ensured that its requirements as to payment methods have been satisfied). Orders may be in Writing or verbal (telephone), but if verbal the Seller's written confirmation of order shall, in the case of dispute, be conclusive evidence of the terms of the verbal order. The Contract may only be made through acceptance by the Buyer of the Seller's quotation if the Seller so indicates in Writing. In either case the Contract will be subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made, or any such quotation is accepted or purported to be accepted, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract

the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents 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 Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until such acceptance is confirmed in Writing by the Seller's authorised representative or, if earlier, the Goods are shipped by the Seller.

3.2 The Buyer shall be responsible for ensuring the accuracy of the terms of its order (including any applicable specification), and for giving the Seller any necessary information relating to the Goods (including as a minimum the relevant Part Number from the relevant Data Sheet for the Goods) within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity of the Goods shall be that set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). The quality and description of and any specification for Goods will be as associated with the relevant Part Number and Data Sheet, or, where there is no Data Sheet, the specification agreed in Writing between the Seller and Buyer.

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or European Union requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4 Price of the goods

4.1 The price of the Goods shall (subject to 4.2) be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price last notified by the Seller to the Buyer before the Contract is made, or if none, the price in the Buyer's order. All prices in quotations are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any change in delivery dates, quantities or specifications for the Goods requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller "ex works", and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5 Terms of payment

5.1 For Buyers paying in advance or by credit card, invoices will be issued and receipted at the time of payment.

5.2 For Buyers whose credit has been approved by the Seller, subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after the Contract is made (as referred to in para 2 above).

5.3 The Buyer shall pay the price of the Goods without any deduction or set off within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to do all or any of the following:

5.4.1 cancel the contract or suspend any further orders, contracts or deliveries to the Buyer;

5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid,

at the rate of 4% p.a above Lloyds TSB Bank base rate from time to time, until payment in full is made.

6 Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection. The Seller is normally willing to arrange transport on behalf of the Buyer to the Delivery Address, but notwithstanding that arrangements are made by the Seller delivery shall be made by the Seller handing the Goods to the carrier. All risks of damage or loss to the Goods during transit and all risks of delay in transit shall be the Buyer's. The cost of the carrier is to be reimbursed to the Seller by the Buyer. The Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7 Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered by the Buyer collecting the Goods at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection;

7.1.2 in the case of Goods to be delivered by way of delivery to the Buyer's carrier (including

a carrier arranged by the Seller) at the time when the Goods are collected by the carrier;
7.1.3 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods including all transport packing and insurance costs and all VAT.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8 Warranties and liability

8.1 Subject to the conditions set out below the Seller warrants that Goods manufactured by the Seller will at the time of delivery correspond with the applicable specification and will be free from defects in material and workmanship for the period referred to in the relevant Data Sheet, or if no period is specified, the period of 12 months from the date of their initial use.

8.2 The above warranty in para 8.1 does not extend to Goods or parts, materials or equipment which are not manufactured by the Seller. For these the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller. The Seller warrants that it will use all reasonable efforts to procure for the Buyer the benefit of the manufacturer's warranty.

8.3 The above warranties are given by the Seller subject to the following conditions:

8.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's or manufacturer's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.3.3 the Seller shall be under no liability if the total price for the Goods has not been paid by the due date for payment;

8.4 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.5 Where the Goods are sold under a consumer transaction (as defined by the Consumer

Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.6 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification or any shortage shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of arrival of Goods at the Delivery Address or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Buyer does not so notify the Seller, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.7 Where any valid claim based on any defect in the quality or condition of any of the Goods (or any part), or their failure to meet specification, is notified to the Seller in accordance with these Conditions, the remedy of the Buyer will be to require the Seller to replace the defective Goods or part free of charge or, at the Seller's sole discretion, refund to the Buyer the price of such defective Goods or part and where a replacement is provided by the Seller, (but subject to a limit equal to the invoiced value of the original defective item) to reimburse to the Buyer the actual cost incurred by the Buyer in removing the defective item, fitting the replacement item and conducting any necessary testing, but the Seller shall have no further liability to the Buyer.

8.8 The Seller supplies a very wide range of devices. Standard products from the Seller's catalogues are not designed specifically for a particular end-use of a particular Buyer. The Buyer is responsible for identifying which device it requires and for fitting and commissioning the device and for the controlling the resale, use and operating environment of the device. Custom manufactured goods are manufactured or processed according to the requirements of the Buyer. Those requirements and the use of the Goods are under the control of the Buyer. Accordingly, except in respect of death or personal injury caused by the Seller's negligence, and except as expressly provided in these Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss, damage, injury, cost or expense of any kind, whatever and however caused, arising directly or indirectly in connection with this Contract including (without limitation) loss of profits, of production or of anticipated savings or any consequential loss or damage whatsoever (and whether any of the above are caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or the resale of the Goods by the Buyer or any third party. The Buyer is advised to effect insurance cover accordingly.

8.9 The remedy stated in para 8.7 states the Seller's entire liability, except in respect of death or personal injury caused by the Seller's negligence, and except as expressly provided in these Conditions, in respect of Goods which are defective or fail to correspond to specification and for shortages, and the Seller shall not be liable for any loss, damage, injury, cost or expense of any kind, whatever and however caused, arising directly or indirectly from any such cause, including (without limitation) loss of profits, of production

or of anticipated savings or any consequential loss or damage whatsoever (and whether any of the above are caused by the negligence of the Seller, its employees or agents or otherwise). The Buyer is advised to effect insurance cover accordingly.

8.10 In the event of a product recall being necessary, the Buyer will co-operate with the reasonable requirements of the manufacturer of the Goods in accordance with best practice for product safety.

8.11 The Seller and Buyer have agreed to these Conditions on the basis that they, and each provision of each sub-clause 8 in particular, are reasonable in the circumstances.

9 Force Majeure

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

9.1 Act of God, explosion, flood, tempest, fire or accident;

9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

9.4 import or export regulations or embargoes;

9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

9.7 power failure or breakdown in machinery.

10 Insolvency of buyer

If: (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or (c) the Buyer ceases, or threatens to cease, to carry on business; or (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11 Exported goods

11.1 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of

any duties thereon.

11.2 The Buyer undertakes not to supply the Goods for end use in, or offer the Goods for resale in, any country notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or which may from time to time be prescribed by the government of the United Kingdom or of any state to whose laws the manufacturer of the Goods is subject, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

12 General

12.1 Any notice for the purposes of these Conditions shall be in Writing addressed to the relevant party at the fax, e-mail, geographical or other address used for the placing or accepting of orders or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.3 If any provision of these Conditions (each part of each sub-clause of these Conditions being regarded as a separate provision for this purpose) is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

12.4 A person who is not party to the Contract shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract Agreement.

12.4 The Contract shall be governed and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England.