

MINE RADIO SYSTEMS (EUROPE) LTD. GENERAL TERMS AND CONDITIONS OF SALE

Definitions

“**Buyer**” means the person or entity to whom Seller’s quotation, order acknowledgement/sales order confirmation, invoice or other sales document is addressed;

“**Contract**” means the contract for the supply of the Services concluded in accordance with the procedure set out below subject always to these Conditions and comprising the Order, any acknowledgement of Order and any other documents incorporated by reference in such documents;

“**Intellectual Property**” means any patent, invention, copyright, database right, registered or unregistered design, trade mark (whether registered or unregistered), trade name, logo, trade secrets, know-how or other industrial or intellectual property right subsisting anywhere in the world, and applications for any of the foregoing, together with the goodwill therein;

“**Parties**” means Buyer and Seller;

“**Seller**” means Mine Radio Systems (Europe) Ltd;

1. **General.** All offers and sales by Seller to Buyer are subject to these terms and conditions (these “Terms”) Any purchase order or other communication from Buyer that contains terms or conditions in addition to or inconsistent with these Terms will not apply to the purchase of any of Seller’s products by Buyer or be used to waive, modify, vary, explain or supplement all or any part of these Terms and are hereby objected to and rejected by Seller, unless acceptance of those terms and conditions is made in writing by an authorized officer of Seller.

2. **Quotations; Acceptance of Orders.** Seller’s written quotations automatically expire 30 days after the date issued unless specified otherwise in the quotation. A verbal quotation expires on the day that it was made. Orders become effective only when accepted by Seller’s written order acknowledgment/sales order confirmation.

3. **Prices; Payment.** Unless stated otherwise in Seller’s order acknowledgment/sales order confirmation or invoice, (a) prices do not include any applicable transportation costs or property, sales, use, privilege or export taxes, custom duties or any other applicable tax, fee or charge imposed on or measured by any transaction between the Parties and Buyer will be responsible for paying such costs and (b) terms of payment are Net 30 days or other terms accepted by the Seller in writing by an authorized officer of Seller. All payments must be in Pounds Sterling, Euros or other currency accepted by the Seller in writing by an authorized officer of the Seller. Any quotations or payments not in Pounds Sterling currency are subject to adjustment based on the currency rate prevailing at the time of order acceptance. A late payment charge of 1.5% of the amount of the invoice may be charged for each month (18% per annum) or any portion thereof, that payment is not made by its due date.

4. **Buyer’s Credit.** Seller’s obligations to Buyer are subject to the limit of Buyer’s credit as determined by Seller in its sole discretion. Seller may at any time limit, modify or cancel the credit of Buyer and may demand payment in cash before shipment or delivery of any products without affecting Buyer’s obligations hereunder.

5. **Shipment; Risk of Loss.** Shipment dates are estimated and Seller will not be liable for late shipments. Delay in delivery of any installment will not relieve Buyer of its obligations to accept the initial or any remaining installments. If shipments are delayed by Buyer, invoices may be rendered on the dates Seller is prepared to make shipments. Products will be shipped Ex-works Seller’s Manchester, United Kingdom facility, with all risk of loss for the products passing to Buyer upon delivery to carrier; provided, however, that products held by Seller as a result of Buyer’s inability or refusal to accept delivery will be held at Buyer’s risk, cost and expense.

6. **Risk and Property.**

6.1 Until payment by Buyer in full and in cleared funds of the price and any other monies payable to Seller in respect of the products, property in the products shall remain in Seller.

6.2 Any claim for shortage must be reported to Seller within 10 days after receipt of products or Buyer waives any claim for shortages.

6.3 Until such time as the property in the products passes to Buyer, Buyer shall hold the products as Seller’s fiduciary agent, and shall keep the products separate from those of Buyer and third parties and properly stored, protected and insured and identified as Seller’s property, but Buyer may resell or use the products in the ordinary course of its business.

6.4 Until such time as the property in the products passes to Buyer (and provided the products are still in existence and have not been resold), Seller may at any time require Buyer to deliver up the products to Seller and, if Buyer fails to do so forthwith, Seller or its agent may enter on any premises of Buyer or any third party where the products are stored and repossess and remove the products.

6.5 Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the products which remain the property of Seller, but if Buyer does so all moneys owing by Buyer to Seller shall (without limiting any other right or remedy of Seller) forthwith become due and payable.

7. **Force Majeure.** Seller will not be liable for any delay or failure in performance of any order, in the delivery or shipment of any product or for any damages or losses suffered by Buyer or any third party which are caused by, or in any manner arises from, directly or indirectly, any labor disturbances, embargos, riots, storms, fires, explosions, acts of God or public enemies, inability to obtain products from a supplier, accidents or breakdown to, or mechanical failure of, machinery or equipment, changes in economic conditions, delays or interruptions in transportation, or any other causes beyond Seller’s control. In the event of such delay, the applicable shipment date(s) will be postponed to compensate for such delay. If Seller’s performance is rendered permanently impossible or impracticable, either Party may cancel the affected order(s) upon written notice to the other Party, and, upon such cancellation, Seller will have no liability and Buyer will be liable only for the pro-rated or allocated portion of such order(s) completed.

8. **Seller’s Limited Warranty.** SELLER WILL WARRANT A PARTICULAR PRODUCT SOLD TO BUYER IN ACCORDANCE WITH THE LIMITED WARRANTY AVAILABLE ONLINE AT SELLER’S WEBSITE WWW.MINERADIO.COM.. THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER IMPLIED TERMS INCLUDING THOSE REGARDING MERCHANTABILITY AND FITNESS FOR PURPOSE.

9. **Limitation of Liability – Buyer’s attention is particularly drawn to this condition**

9.1 Nothing in these Terms shall exclude or limit either party’s liability to the other in respect of any fraudulent misrepresentation made by it, or in respect of death or personal injury caused by its negligence. Moreover, to the extent that Buyer is acting under this Contract as a consumer, nothing in these Terms affects any of Buyer’s statutory rights as a consumer.

9.2 Subject to clause 9.1 above, neither party shall be liable for any loss of profit, loss of revenue, business interruption, or any other special, indirect or consequential losses, whether caused by negligence, breach of duty (statutory or otherwise), breach of contract or otherwise and whether or not such losses were foreseeable at the time of entering the Contract.

9.3 Subject to clauses 9.1 and 9.2 above, the liability of each party under the Contract shall be limited to the extent of any loss, damages, injury, expenses, costs (including reasonable legal costs) that are directly caused by its failure to perform its obligations under the Contract and in any event, the total aggregate limit of each party’s liability under the Contract whether under contract, tort or any other legal basis is limited to the price agreed to be paid for the products under the Contract in the year during which the claim giving rise to liability arose.

10. **Confidential Information.** Seller's technical, trade secret, proprietary or similar information (collectively "Confidential Information") disclosed by Seller to Buyer or its officers, employees, agents or other representatives (collectively "Representatives") and all copies thereof are the sole and exclusive property of Seller. Such disclosure does not grant to Buyer or its Representatives any right, title or interest of any kind in any Confidential Information. Upon Seller's request, Buyer will promptly return to Seller all Confidential Information in the possession of Buyer or any of its Representatives. All Confidential Information will be kept confidential by Buyer and its Representatives and will not be disclosed without Seller's prior written consent. Buyer will be responsible for any breach of this covenant by Buyer or any of its Representatives.

11. **Intellectual Property** The Buyer hereby acknowledges that all Intellectual Property in the products shall remain with and shall be owned at all times by Seller and Buyer further acknowledges that it shall not, as a result of this Contract, obtain any rights in respect of any such Intellectual Property or the goodwill associated therewith.

12. **Default.** If Buyer (a) fails to pay any amount to Seller when due, (b) fails to observe or perform any of its other obligations under these Terms or (c) becomes insolvent, is adjudicated a bankrupt, voluntarily files or permits the filing of a petition in bankruptcy, makes an assignment for the benefit of creditors, seeks any similar relief under any bankruptcy laws or a receiver is appointed for its assets, then, at Seller's sole option, all sums due or to become due from Buyer to Seller may become immediately due and payable, and concurrently, or in the alternative, Seller may terminate any existing order between the Parties in whole or in part, defer shipment or delivery of any products, sell any part of any undelivered products and exercise any other remedies available to Seller under applicable law.

13. **Indemnification.** Buyer will indemnify, defend and hold the Seller harmless from all costs, expenses and losses incurred by them (including, without limitation, attorneys' fees and disbursements) which relate to or arise out of (a) Buyer's or its customers' use, handling, installation, sale, distribution or disposal of any products sold hereunder, (b) Buyer's breach of any of these Terms, (c) Seller's enforcing these Terms and (d) any patent, trademark or copyright infringement claim resulting from compliance with any specifications or designs provided by Buyer to Seller. Buyer will promptly reimburse the Seller for such costs and expenses.

14. **Cancellation.** Any contract or order may be cancelled by Buyer only with the prior written consent of Seller and upon reimbursement to Seller for all costs, expenses and losses incurred by Seller as a result of such cancellation, including a reasonable profit and overhead.

15. **Returns.** Returned products will not be accepted, unless (a) Buyer has obtained a Return Material Authorization from Seller prior to making the return, (b) the returned product is returned to Seller in new and unused condition, (c) Buyer provides proof of purchase for the returned product and (d) such product is returned to Seller within thirty (30) days of purchase, freight prepaid. A restocking fee for rehandling equal to 15% of the purchase price will be charged to Buyer for any returned products.

16. **Governing Law; Disputes.** Seller's quotations, invoices order acknowledgements/sales order confirmations and these Terms, all disputes and claims arising out of their subject matter, are to be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute that arises out of or in connection with these Terms and that the language of the courts shall be English. Buyer hereby submits to the exclusive jurisdiction of such courts, and all courts competent to hear appeals therefrom, and waives any and all defences based on lack of jurisdiction. Buyer agrees to indemnify the Seller for any and all costs incurred by the Seller (including its legal fees) in defending any action filed or attempted to be filed by Buyer in any jurisdiction outside England and Wales.

17. **Exclusion of International Sale of Goods Convention.** The Parties agree that the application of the United Nations Convention on Contracts for the International Sale of Goods to the sale of any products arising under or pursuant to these Terms does not apply and is hereby expressly excluded.

18. **Entire Agreement; Waiver.** Seller's quotation, order acknowledgement/sales order confirmations, invoice and these Terms constitute the whole agreement between the parties and supersede all previous agreements between the parties relating to its subject matter. The parties acknowledge that, in entering into this agreement, they have not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the agreement. Nothing in this condition shall limit or exclude any liability for fraud.

19. **Invalidity** If any of the provisions of this Contract is or becomes invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In any such circumstances, the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision, which is found to be invalid, illegal or unenforceable.

20. **Successors and Assigns; Assignment.** These Terms will be binding upon the Parties and their respective successors and assigns; provided, however, that Buyer may not assign any of its rights or duties hereunder without Seller's prior written consent, which consent may be withheld in Seller's sole discretion.

21. **No Third Party Rights.** Save as provided by these Terms a person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms or any term of the Contract, but this does not affect any right or remedy of a third party which exists or is available apart from by that Act.