

EMS MANUFACTURING
A member of EMS SECURITY GROUP LIMITED

Registered Office:
Technology House, West Trading Estate, Sea Street,
Herne Bay, Kent CT6 8JZ

Registration in England No. 3037609

STANDARD CONDITIONS OF SALE

1) **General**

These Standard Conditions of Sale ("the Conditions") apply to goods or services supplied by EMS Security Group Ltd, EMS Manufacturing ("the Company") which is a trading style of Electronic Modular Services Ltd ("the Company") to a purchaser ("the Buyer") and shall be incorporated into each contract ("the Contract") made by the Company for the sale of the Company's goods ("the Goods"). All definitions are to be found listed at the end of this section.

The Company contracts only in accordance with these Conditions and any other ancillary terms as are agreed in writing between the Company and the Buyer. No conditions or terms of the Buyer shall apply to this contract. No variation of any of the Conditions shall be effective unless in writing and signed by a duly authorised representative of the Company.

Definitions:

"Buyer"	means the trading entity, or their nominated agent, that is able to place and authorise for payment a purchase order.
"Company"	means any Company within the structure of the EMS Security Group Ltd.
"Goods"	the provision of contract manufacturing to be provided pursuant to the Contract as set out in the written quotation, customer order form, or any other written communication where the Buyer orders goods which the Supplier provides or agrees to provide to the Buyer.
"Intellectual Property"	means all rights in patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable.
"Seller"	means any Company within the structure of the EMS Security Group Ltd.
"Services"	the provision of services as set out in the written quotation, customer order form, or any other written communication where the Buyer orders services

which the Supplier provides or agrees to provide to the Buyer.

“Reference Rate” means the Bank of England base rate on 31st December for the six-month period of 1st January to 30th June, and the Bank of England base rate on 30th June for the six-month period of 1st July to 31st December.

2) **Quotations and Acceptance of Orders**

- (a) Any quotation by the Company remains open for acceptance for 30 days from the date on which the Company sends the quotation to the Buyer or as otherwise stated on the quotation. If no quotation is rendered the price set out in the Company’s price list shall, as amended from time to time, apply.
- (b) Any quotation made shall be valid only insofar as it was made by a person authorised to make a quotation on behalf of the Company. It is the Buyer’s responsibility to verify the authority of any person or employee of the Company making or giving any quote on behalf of the Company.
- (c) The Buyer’s order represents an offer to purchase which is not accepted until the Company sends an order acknowledgement. If the Company accepts the Buyer’s offer, an order acknowledgement will be sent, either by email or by post, and the contract to supply Goods or Services will be formed at the time the order acknowledgement is sent. The Company reserves the right to cancel an accepted order; in the event of such cancellation, the Company shall refund any sums already paid by the Buyer.

3) **Specifications**

If Goods are supplied in accordance with the Buyer’s specifications the Buyer shall be solely responsible for the accuracy of the specifications and the Buyer expressly acknowledges that any Goods created in accordance with any specifications supplied by the Buyer are fit for their purpose. Furthermore the Buyer expressly acknowledges that he is relying solely on his own skill and judgement and he has not relied for this purpose upon the skill or judgement of the Company, its agents or employees and the Buyer will indemnify the Company against all claims by the customers of the Buyer and/or Sub-Buyer in this regard.

4) **Price**

- (a) All prices stated by the Company are exclusive of carriage, any insurance and VAT at current rates.
- (b) Clause 4 (c) shall apply if the Company provides the Goods and/or Services on a time and materials basis. Clause 4 (d) shall apply if the Company provides the Goods and/or Services for a fixed price.

- (c) Where the Goods and/or Services are provided on a time and materials basis, the charges payable shall be calculated in accordance with the Company's standard daily fee rates, as amended from time to time.
- (d) Where the Goods and/or Services are provided for a fixed price, the total price for the Services shall be the amount set out in the quotation or order form or any other written communication where the Buyer orders Goods and/or Services.

5) **Payment**

- (a) Unless otherwise agreed in writing between the Company and the Buyer, where credit terms are agreed by the Company, payment for the Goods supplied is due thirty days from the end of the month in which the goods were invoiced. The Company shall be entitled to sue for the price plus a sum equivalent to the Reference Rate plus 8% for the number of days that payment is overdue whether or not property in the Goods has passed by virtue of Clause 8.
- (b) The Company may at its discretion require that, following acceptance by the Company of the Buyer's offer, the Buyer shall pay a deposit of up to 50% of the contract value before despatch of Goods or performance of Services.
- (c) Without prejudice to any other rights or remedies of the Company, any default by the Buyer in making payment on the due date shall entitle the Company to suspend deliveries under the Contract or any other contract between the Company and the Buyer so long as the default continues and to treat the Contract as repudiated by the Buyer and determined if the Buyer has not within seven days of receiving written notice from the Company paid all sums due to the Company.

6) **Delivery**

- (a) Delivery, for which an additional charge is levied, will be made by the Company's carriers to the address nominated by the Buyer.
- (b) The Company will use reasonable endeavours to complete delivery on or before delivery dates requested by the Buyer as estimated by the Company and time of delivery shall not be of the essence. The Company will not be liable for any consequential delay in delivery to the Buyer.
- (c) Where delivery is by instalments each instalment shall constitute a separate contract and any failure or defect in any one or more instalments shall not entitle the Buyer to repudiate the agreement nor to cancel any subsequent instalments. If any order is cancelled prior to the last in a series of deliveries the Company reserves the right to charge for all goods delivered at the quotation price or other price as appropriate at the date of the cancellation.
- (d) The Buyer cannot reject Goods by reason only that the quantity delivered is less than the quantity ordered.
- (e) It is the Buyer's responsibility to notify the Company if the Goods have not been received by the Buyer within seven days of the date of receipt of invoice. If no notification is made the Buyer shall be deemed to have received the Goods. Likewise it is the Buyer's responsibility to notify the Company if any of the Goods have been rejected by the Buyer within

seven days of the date of receipt of the Goods. If no such notification is made the Buyer shall be deemed to have accepted the Goods.

- (f) It is the Buyer's responsibility to arrange any and all prudent and adequate forms of insurance for all reasonable risks from the moment the Buyer is notified that the Goods are available for collection or delivery and maintain such a policy of insurance until title in the Goods passes from the Company to the Buyer. Upon reasonable notice, the Buyer will send a copy of the insurance policy to the Company with evidence that any and all premiums have been discharged. Furthermore the Buyer will fully indemnify the Company if any person, agent or employee of the Buyer commits or allows the commission of or takes no action to prevent any act or event that invalidates any such policy of insurance.

7) **Examination and Claims**

- (a) The Buyer shall upon delivery examine the Goods and shall within seven working days of delivery notify the Company and the carrier of any apparent damage, defects or shortage.
- (b) Claims in respect of damage, defects or shortage not apparent on examination under (a) must be notified in writing to the Company within fourteen days of the date of delivery.

8) **Property and Risk**

- (a) Risk and associated responsibilities and obligations shall pass to the Buyer upon notification that the Goods are available for delivery, whether delivery is by single or multiple despatches from The Company to The Buyer.
- (b) The Buyer acknowledges that before entering into an agreement for the purchase of Goods from the Company, he has expressly warranted and represented that he is not insolvent and has not committed any act of bankruptcy, or being a company with limited or unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver, to petition for the winding up of the company or exercise any other rights over or against the company's assets.
- (c) Such Goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Buyer shall have paid to the Company the agreed price.
- (d) The Buyer acknowledges that he is in possession of Goods solely as bailee for the Company until such time as the full price thereof is paid to the Company together with the full price of any other goods the subject of any other contract with the company.
- (e) Until such a time as the Buyer becomes the owner of the Goods, he will store them on his premises separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of the Company.
- (f) The Buyer's right to possession of the Goods shall cease if he, not being a company, commits an available act of bankruptcy or if he, being a company, does anything or fails to do anything which would entitle a

receiver to take possession of any assets or which would entitle any person to present a petition for winding up. The Company may for the purpose of recovery of its goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.

- (g) Subject to the terms hereof, the Buyer is licensed by the company to agree to sell on the Company's Goods, subject to the express condition that such an agreement to sell shall take place as agents (save that the Buyer shall not hold himself out as such) and bailees for the Company, whether the Buyer sells on his own account or not and that the entire proceeds thereof are held in trust for the Company and are not mingled with other monies or paid into any overdrawn account and shall be at all times identifiable as the Company's monies.
- (h) If Goods that are the property of the Company are mixed with goods that are the property of the Buyer or are processed with or incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Company. If Goods that are the property of the Company are mixed with goods that are the property of any person other than the Buyer or are processed with or incorporated therein, the product thereof shall become or shall be deemed to be owned in common with that other person.
- (i) If the Buyer has not received the proceeds of any such sale he will, if called upon to do so by the Company, within seven days thereof, assign to the Company all rights against the person(s) to whom he has supplied any product or chattel made from or with the Company's Goods.
- (j) The Buyer shall indemnify the Company on a full indemnity basis against all loss, damage, costs or expenses including those in respect of third party claims.

9) **Warranty**

- (a) Terms in this contract excluding or limiting liability in relation to breach of the terms implied by the Supply of Goods (Implied Terms) Act 1973 or the Sale of Goods Act 1979 do not apply when this Contract between the Company and the Buyer when the Buyer deals as a consumer.
- (b) Subject to paragraph (a) above, all terms conditions or warranties – statutory (including those mentioned above), common law or otherwise – as to (i) the correspondence of the Goods to any description, or (ii) the satisfactory quality of the Goods, or (iii) the fitness of the Goods for any purpose whatsoever (whether made known to the Company or not) are hereby excluded to the fullest extent permitted by law from the Contract.
- (c) The Company warrants only that the Goods are reasonably free from defects in design (except any design submitted or specified by the Buyer) in materials and in workmanship, such warranty ("the Warranty") to cover only defects becoming apparent in the period of one year, unless otherwise agreed in writing between the Company and the Buyer and signed by a duly authorised representative of the Company, from invoice date which are notified in writing by the Buyer to the Company within seven days of their becoming apparent.

- (d) The Company's obligations to the Buyer under the Warranty shall not apply:
- (i) To damage caused by the Buyer or any third party's act, default or misuse of the Goods or by failure to follow any instructions supplied with the goods;
 - (ii) If the Goods have been stored, handled, installed or applied in such a way that damage is likely to occur
 - (iii) If the Goods are altered modified or repaired.
- (e) If within one year after delivery there shall appear in the Goods any defect which shall arise under proper use from faulty materials, workmanship, or design (other than a design made, furnished, or specified by the Buyer for which the Company had disclaimed responsibility), and the Buyer shall give notice thereof in writing to the Company, the Company shall, provided that the defective goods or defective parts thereof have been returned to the Company if he shall have so required, make good the defects either by repair or, at the option of the Company, by the supply of a replacement. Batteries supplied with goods are specifically excluded from this product warranty. The liability of the Company to the Buyer under the Warranty shall be limited to the repair or replacement of the Goods.
- (f) Save for liability for death or personal injury arising from the Company's negligence (which if proved is not excluded) the Company's obligation to repair or replace as aforesaid shall constitute the full extent of the Company's liability (in contract or tort or otherwise) in respect of any loss or damage sustained by the Buyer whether caused by any breach of the Contract or misrepresentation or by the negligence of the Company, its employees or agents or arising from any other cause whatsoever and the Company shall not be liable for any consequential economic direct or indirect loss suffered by the Buyer arising there from.

10) **Cancellation, Suspension and Termination**

- (a) If the Buyer shall purport to cancel the whole or any part of the Contract the Company may, by notice in writing to the Buyer elect to treat the Contract as repudiated and the Buyer shall thereupon be liable to pay to the Company by way of liquidated damages a sum equal to all the expenses incurred by the Company in connection with the Contract, including an appropriate amount in respect of administrative overheads, costs and losses of profit. The Company's reasonable estimate of the expenses incurred shall be final and binding on the parties and shall include an amount for the anticipated loss of net profit on the supply of the product to the Buyer
- (b) If for any cause whatsoever beyond its control the Company is unable to make any delivery on the applicable delivery date or perform any of its other obligations under the Contract, the Company may, by notice to the Buyer, terminate the Contract or suspend the Contract without liability for any loss or damage thereby incurred by the Buyer.

11) **Force Majeure**

- (a) In so far as the performance of the Company may be affected by any strike, any lack of available shipping or transport of materials, any restriction, regulation or decree by any local or municipal authority or government department or by any cause beyond the Company's reasonable control (which shall be construed without reference to the preceding causes) the Company may elect at its absolute discretion either:
 - (i) To terminate the Contract, or
 - (ii) To proceed to perform or continue to perform under the contract within a reasonable time after the termination of such events or circumstances.
- (b) In the event that the Company makes an election under Clause 11(a) the Buyer shall accept the Goods or such part of them as are delivered to it notwithstanding any delay.

12) **Divisibility**

This Contract is divisible. Each delivery under this Contract shall be deemed to arise from a separate Contract and shall be invoiced separately. Any invoice for delivery shall be payable in accordance with clauses 4 and 5 above without reference to and notwithstanding any defect or default in delivery of any other instalment.

13) **Miscellaneous**

- (a) Except as otherwise expressly provided by this agreement none of the Conditions of this agreement shall be enforceable by any person who is not party to it.
- (b) All Intellectual Property rights sued in or produced from or arising as a result of the performance of this contract shall, so far as not already so vested, become the absolute property of the Company, and the Buyer will do all that is reasonably necessary to ensure that such rights vest in the Company (as, without prejudice to the generality of the foregoing) by the execution of appropriate instruments, or the making of agreements with third parties.
- (c) All notices and communications given under these Conditions shall be in writing or other durable form and shall be deemed to have been given:
 - (i) When delivered, if delivered personally or by messenger during normal business hours (or on the commencement of the first working day thereafter);
 - (ii) When sent, if transmitted by telex, facsimile or electronic mail during normal business hours or on the commencement of the first working day thereafter); or
 - (iii) On the second business day following mailing by certified or registered mail.

In all the above cases, the communication will be deemed to have been sent or delivered to the correct address or number if sent to the last known address or number.

- (d) If any provision of these Conditions (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these Conditions, and the validity and enforceability of the other provisions of these Conditions shall not be affected. If a provision of these Conditions (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14) **Proper Law**

The Contract is and shall be deemed to have been made in England and shall in all respects be governed by English Law and shall be subject to the jurisdiction of the English Court.

Signed

Name: C. Mulvihill.

For and on behalf of the Company

Dated: 3rd May 2011