

KENNEX (HONG KONG) LIMITED

TERMS AND CONDITIONS OF SALES

1 Interpretation

1.1 In these terms and conditions (“**Conditions**”) the following definitions shall apply:

Business Day	means a day other than a Saturday, Sunday or public holiday in Hong Kong;
Buyer	means the person or firm who purchases Goods from the Seller identified and whose details are set out in the Order;
Conditions	means the terms and conditions set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to products, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under or otherwise pursuant to this Contract;
Contract	means the agreement between the Seller and the Buyer for the sale and purchase of Goods incorporating or adopting or otherwise applying these Conditions;
Delivery Location	means the address for delivery of the Goods as set out in the Order;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including (but not limited to) an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest, strike, lockout or boycott or other industrial action; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required by for performance of the Contract, except any party's failure to pay shall not be an event of Force Majeure in any event;
Goods	means the goods set out in the Order and to be supplied by the Seller to the Buyer;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case:

- whether registered or not;
- including any applications to protect or register such rights;
- including all renewals and extensions of such rights or applications;
- whether vested, contingent or future;
- to which the Seller is or may be entitled; and
- in whichever part of the world existing;

Order means the Buyer's order for the Goods from the Seller as may, for example, be confirmed in the Buyer's written acceptance of the Seller's quotation for the supply of the Goods;

Seller means Kennex (Hong Kong) Limited (company registration number: 0443181) of Unit D, 11/F, Roxy Industrial Centre, 85-66 Tai Lin Pai Road, Kwai Chung, N.T., Hong Kong; and

Specification means the description or specification of the Goods set out in the Order.

1.2 Unless the context otherwise requires:

1.2.1 references to the Contract include the Conditions, the Order and its schedule (if any);

1.2.2 clause headings do not affect their interpretation; and

1.2.3 references to any legislation shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 Application of these terms and conditions

2.1 These Conditions shall apply and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract.

2.3 No variation of these Conditions or to an Order, or to a quotation from the Seller shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.

2.4 Each Order by the Buyer to the Seller shall be deemed to be an offer to purchase Goods and subject to these Conditions.

2.5 The Seller reserves the right at all times to reject any Order, in whole or in part, at its sole discretion.

- 2.6 Any quotation by the Seller for the provision of Goods shall be deemed to be:
 - 2.6.1 an invitation to treat (and shall not be an offer) by the Seller to supply Goods on and subject to the Conditions; and
 - 2.6.2 shall be valid for 60 days only from the date of issue.
- 2.7 A Contract shall be formed upon the earlier to occur of:
 - 2.7.1 written acceptance by the Seller of the Buyer's Order; or
 - 2.7.2 the execution of a specific written agreement by both the Seller and the Buyer.

3 Price

- 3.1 The price for the Goods shall be as set out in the Order.
- 3.2 The Seller reserves the right to increase the Price for any undelivered Goods:
 - 3.2.1 by giving 45 days' written notice to the Buyer, such increase to take effect in respect of any relevant Goods delivered after the expiry of such notice; or
 - 3.2.2 with immediate effect by written notice to the Buyer, where such increase arises as a consequence of any increase in the direct cost to the Seller of supplying the relevant Goods which is due to any factor beyond the control of the Seller.
- 3.3 If the Buyer does not agree with any increase in the price notified in accordance with clause 3.2 then the Buyer may terminate the Contract in respect of any undelivered Goods by giving the Seller 30 days' notice, such notice to expire no later than the date on which the price increase was due to take effect provided always that the Buyer shall accept delivery (and shall, where applicable, pay the increased price for) any Goods referred to in clause 3.2.2 in respect of which the Seller had (at or prior to the time of receiving such notice) entered into an irrevocable commitment to purchase or subcontract from any third party.

4 Payment

- 4.1 The Seller shall issue its invoice for the Goods within 7 days upon delivery pursuant to the delivery terms set out in the Order.
- 4.2 The Buyer shall pay all invoices:
 - 4.2.1 in full as set out in the Order, without deduction or set-off other than as required by law, in cleared funds in accordance with the payment terms set out in each invoice, and
 - 4.2.2 to the Seller's nominated bank account.
- 4.3 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date:

- 4.3.1 the Seller may, without limiting its other rights, charge interest on such sums at 2% per annum above the best lending rate of HSBC from time to time in force, and
- 4.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Credit limit

The Seller may set and vary credit limits from time to time and withhold all further supplies if the Buyer exceeds such credit limit.

6 Delivery

6.1 The Goods shall be:

- 6.1.1 delivered by or for the Seller to the Delivery Location on the date(s) specified in the Order; or
- 6.1.2 made available for collection by the Buyer at the Seller's, or carrier's as the case may be, premises set out in the Order. The Buyer will collect the Goods within the period specified in the Order.

6.2 The Goods shall be deemed delivered:

- 6.2.1 if delivered by or for the Seller under clause 6.1.1, on completion of unloading of the Goods at the Delivery Location; or
- 6.2.2 if collected by the Buyer under clause 6.1.2, on completion of loading at the Seller's, or carrier's as the case may be, premises.

6.3 The Goods may be delivered by instalments if provided in the Order. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

6.4 The Seller shall not be liable for any delay in or failure of delivery caused by:

- 6.4.1 the Buyer's failure to: (a) make the Delivery Location available; (b) prepare the Delivery Location as required for delivery; or (c) provide the Seller with adequate instructions, for delivery;
- 6.4.2 the Buyer's failure to collect the Goods from the Seller's premises; or
- 6.4.3 an event of Force Majeure.

6.5 If the Buyer fails to accept delivery of or collect the Goods as provided in clause 6.1.1 or 6.1.2 on the date or within the period set out in the Order:

- 6.5.1 delivery of the Goods shall be deemed to have occurred at 5 p.m. on the next Business Day following such date; and
- 6.5.2 the Seller shall store and insure the Goods pending delivery, and the Buyer will pay all costs and expenses incurred by the Seller in doing so.

6.6 If, after 20 Business Days following the due date for delivery or collection of the Goods, the Buyer has not taken delivery of or collected them, the Seller may resell or otherwise dispose of the Goods. The Seller shall:

6.6.1 deduct reasonable storage charges and costs of resale; and

6.6.2 account to the Buyer for any excess of the resale price over, or invoice the Buyer for any shortfall of the resale price below, the price paid by the Buyer for the Goods.

7 Title and risk

7.1 Risk in the Goods shall pass to the Buyer when the Goods are transferred to the carrier under clause 6.1.

7.2 Title to the Goods shall pass to the Buyer once the Seller has received payment in full for the Goods.

7.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

7.3.1 hold the Goods as bailee for the Seller;

7.3.2 store the Goods separately from all other material in the Buyer's possession;

7.3.3 take all reasonable care of the Goods and keep them in reasonable condition;

7.3.4 insure the Goods: (a) with a reputable insurer (b) from the date of delivery (c) against all risks (d) for an amount at least equal to the price (e) noting the Seller's interest on the policy;

7.3.5 ensure that the Goods are clearly identifiable as belonging to the Seller;

7.3.6 not remove or alter any mark on or packaging of the Goods;

7.3.7 inform the Seller as soon as possible if it becomes subject to any of the events set out in clause 14.1; and

7.3.8 provide the Seller such information concerning the Goods as the Seller may request from time to time.

7.4 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in clause 14.1, the Seller may:

7.4.1 require the Buyer at the Buyer's expense to re-deliver the Goods to the Seller; and

7.4.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

8 Warranty

- 8.1 The Seller warrants that, for a period of 12 months from delivery (the **Warranty Period**), the Goods will be of satisfactory quality within the meaning of the Sale of Goods Ordinance (Cap 26).
- 8.2 The Seller shall, at its option, repair, replace or refund the price of defective Goods, provided that and subject to clause 8:
- 8.2.1 the Buyer informs the Seller in writing during the Warranty Period and promptly on discovery that some or all of the Goods do not comply with clause 8.1;
 - 8.2.2 the Buyer gives the Seller a reasonable opportunity to examine the defective Goods; and
 - 8.2.3 the Buyer returns the defective Goods to the Seller at the Buyer's expense.
- 8.3 The Conditions shall apply to any Goods repaired or replaced under clause 8.2.
- 8.4 The Seller shall not be liable for any failure of the Goods to comply with clause 8.1:
- 8.4.1 where such failure arises by reason of fair wear and tear, wilful damage, negligence, abnormal working conditions, or could be expected to arise in the normal course of use of the Goods;
 - 8.4.2 to the extent caused by the Buyer's failure to comply with the Seller's instructions as to: (a) storage, installation, commissioning, use or maintenance of the Goods, or (b) good practice in relation to the storage, installation, commissioning, use or maintenance of the Goods;
 - 8.4.3 to the extent caused by the Seller following any design or specification or requirement of the Buyer in relation to the Goods;
 - 8.4.4 where the Buyer repairs or alters any Goods without the Seller's prior agreement; or
 - 8.4.5 where the Buyer uses any of the Goods after notifying the Seller that it does not comply with clause 8.1.
- 8.5 Except as set out in this clause 8, the Seller:
- 8.5.1 gives no warranty in relation to the Goods; and
 - 8.5.2 will be under no liability for their failure to comply with the warranty in clause 8.1.

In particular, the conditions implied by sections 15 – 18 of the Sale of Goods Ordinance (Cap 26) are expressly excluded.

9 Obligations of the Buyer

- 9.1 The Buyer shall:

- 9.1.1 place all Orders on these Conditions and ensure that the contents of any Order are complete and accurate;
- 9.1.2 ensure that any part of the Specification which it provides is complete and accurate and contains all information the Seller may require;
- 9.1.3 co-operate fully with the Seller in relation to delivery or collection of the Goods.

10 Liability

- 10.1 The Seller does not exclude its liability:
 - 10.1.1 for death or personal injury caused by its negligence; or
 - 10.1.2 for breach of the terms implied by section 14 of the Sale of Goods Ordinance (Cap 26); or
 - 10.1.3 for fraud or fraudulent misrepresentation.
- 10.2 Neither party shall be liable for:
 - 10.2.1 loss of data or use;
 - 10.2.2 any form of indirect, consequential or special loss; or
 - 10.2.3 any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether any such loss is direct or indirect;and, in each case, however arising.
- 10.3 Other than as set out above, the Seller limits its liability (however arising) in respect of or in connection with the Goods, and otherwise in connection with the Contract, to 5 per cent of the total price of the relevant Goods.

11 Third party Intellectual Property Rights infringement

- 11.1 The Seller will defend or, at its option, settle any action brought against the Buyer arising from any claim that the use of the Goods by the Buyer in accordance with the Contract infringes any third party Intellectual Property Right, and indemnify the Buyer against all reasonable costs and expenses incurred by the Buyer in connection with such claim.
- 11.2 The Seller's obligations under clause 11.1 will not apply to Goods modified or used by the Buyer other than in accordance with the Conditions. The Buyer shall indemnify the Seller against all reasonable costs and expenses incurred by the Seller in connection with any claim arising from such modification or use.
- 11.3 The Seller's obligations under clause 10.1.1 are conditional upon the Buyer:
 - 11.3.1 promptly advising the Seller in writing of any claim or action;
 - 11.3.2 making no admission as to, or settlement or compromise of any claim or action without the Seller's prior written consent;

- 11.3.3 giving the Seller sole conduct of any defence and any settlement negotiations;
and
- 11.3.4 co-operating fully with the Seller and providing the Seller with all reasonable assistance in the defence or settlement of such claim or action.
- 11.4 The Buyer's reasonable costs of compliance with clauses 11.3.3 and 11.3.4 shall be paid by the Seller.
- 11.5 The provisions of this clause 11 set out the Seller's entire liability and the Buyer's sole right in respect of third party Intellectual Property Rights infringement claims or actions.

12 Confidentiality

- 12.1 Each party shall keep confidential all Confidential Information of the other party and will only use the other's Confidential Information as required to perform the Contract. The provisions of this clause will not apply to:
 - 12.1.1 any information which was in the public domain at the date of this Contract;
 - 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 12.1.3 any information which is independently developed by the other party without using information supplied by the first party; or
 - 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

13 Force Majeure

- 13.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
 - 13.1.1 promptly notifies the other of the Force Majeure event and its expected duration;
and
 - 13.1.2 uses reasonable endeavours to minimise the effects of that event.
- 13.2 If, due to Force Majeure, a party:
 - 13.2.1 is or will be unable to perform a material obligation; or
 - 13.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 60 days.

then the other party may terminate the Contract on immediate written notice.

14 Termination

- 14.1 The Contract may be terminated forthwith at any time by the Seller on written notice to the Buyer if:

- 14.1.1 the Buyer commits a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or if capable of remedy is not remedied within 15 days of written notice to do so;
- 14.1.2 the Buyer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due;
- 14.1.3 the Buyer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts other than solely by way of solvent amalgamation or reconstruction, or (c) makes an application to court for protection from its creditors generally;
- 14.1.4 the Buyer passes a resolution for winding-up or a liquidator is appointed in relation to the other, or a winding-up order is made in relation to the other, other than solely in relation to a solvent amalgamation or reconstruction;
- 14.1.5 a receiver may be or is appointed in relation to the Buyer or any of its assets;
- 14.1.6 any creditor of the Buyer attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the Buyer's assets, and such attachment or process is not discharged within 14 days;
- 14.1.7 the Buyer takes or suffers any action similar to any of the above in any jurisdiction;
- 14.1.8 the Buyer suspends trading, ceases to carry on business, or threatens to do either;
- 14.1.9 the Buyer, being an individual, dies or ceases to be capable of managing his own affairs; or
- 14.1.10 the Buyer is subject to an event of Force Majeure under clause 13.
- 14.2 In addition to its rights under clause 14.1 the Seller may terminate this Contract at any time by giving 7 days' written notice to the Buyer if the Buyer has failed to pay any amount due under the Contract within 3 Business Days of the due date.
- 14.3 On termination of the Contract for any reason:
 - 14.3.1 the Buyer shall within 3 Business Days pay all invoices of the Seller then outstanding and not disputed in good faith;
 - 14.3.2 the Seller shall, within 10 Business Days, invoice the Buyer for all Goods delivered or provided but not yet invoiced and the Buyer will pay such invoice within a further 10 Business Days (unless the invoice is disputed in good faith);
 - 14.3.3 Buyer shall forthwith return any materials of the Seller then in its possession or control; if it fails to do so, the Seller may enter onto any premises owned by or under the control of the and take possession of them;
 - 14.3.4 the accrued rights and liabilities of the parties shall not be affected; and
 - 14.3.5 any clause which expressly or by implication is to survive termination shall do so.

15 General

15.1 Time

Unless stated otherwise, time is not of the essence of any date or period specified in these Conditions, the Order or otherwise in the Contract.

15.2 No set-off

All payments by the Buyer shall be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it shall pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.

15.3 Relationship

The parties are independent businesses and not principal and agent, partners, or employer and employee.

15.4 Severability

If any part of the Contract is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision shall be severed from the Contract and the remaining provisions of the Contract will otherwise remain in full force.

15.5 Notices

Notices under the Contract shall be in writing and sent to the persons and addresses set out in the Order. They may be given, and shall be deemed received:

15.5.1 by post: 2 Business Days after posting;

15.5.2 by airmail: 7 Business Days after posting;

15.5.3 by hand: on delivery;

15.5.4 by facsimile: on receipt of a successful transmission report from the correct facsimile number; and

15.5.5 by e-mail: on receipt of a delivery or read receipt mail from the correct e-mail address.

15.6 Waiver

No delay, act or omission by either party in exercising any right or remedy shall be deemed a waiver of that, or any other, right or remedy.

15.7 Rights of third parties

This Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Ordinance (Cap 623) or otherwise.

15.8 Priority

In the event of conflict, the terms of these Conditions shall prevail over those of the Order, including its schedule (if any).

15.9 Entire agreement

The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.

15.10 Succession

The Contract shall bind and benefit each party's successors and personal representatives.

15.11 Governing law and jurisdiction

15.11.1 The Contract shall be governed by the laws of Hong Kong.

15.11.2 Disputes shall be submitted to the non-exclusive jurisdiction of the courts of Hong Kong.

Acceptance of Terms and Conditions of Sales

We hereby acknowledge that we have read and understood the applicable terms and conditions set out hereinabove and confirm our acceptance of the same.

_____ (Signature)

Name:

Position:

Company:

Date: