

CAMBRIDGE ELECTRONIC DESIGN
TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 The following definitions shall apply in these terms and conditions (the “**Terms**”):

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

“**Carrier**” means any person who accepts custody of or responsibility for the Products for the purpose of transporting them to an agreed destination in a manner agreed with CED;

“**CED**” means Cambridge Electronic Design Limited, a company incorporated and registered in England and Wales with company number 00972132 whose registered office is at Technical Centre, 139 Cambridge Road, Milton, Cambridge, CB24 6AZ, United Kingdom;

“**Contract**” means the contract between CED and the Customer for the sale and purchase of the Products in accordance with these Terms;

“**Customer**” means the party who purchases the Products from CED;

“**Delivery Location**” has the meaning given in Clause 5.4;

“**Force Majeure Event**” means an event, circumstance or cause beyond a party’s reasonable control;

“**Order**” means the Customer’s order for the Products, as set out in either the Customer’s purchase order form or the Customer’s written acceptance of CED’s quotation, whichever shall apply;

“**Products**” means those products (or any part of them) set out in the Order;

“**Specification**” means CED’s published specification for the Products or, where applicable any specification for the Products, including any related plans and drawings, agreed in writing by the Customer and CED;

“**VAT**” means value added tax or any equivalent tax chargeable in the United Kingdom; and

“**Warranty Period**” has the meaning given in Clause 6.1.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its successors and permitted assigns.

1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 A reference to writing or written includes email.

2. Contract

2.1 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification agreed between the Customer and CED are complete and accurate.

2.3 The Order shall only be deemed to be accepted when CED issues a written acceptance of the Order or when CED takes any steps to fulfil the Order (whichever is sooner), at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by CED and any descriptions or illustrations contained in CED's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Products given by CED shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

3. The Products

3.1 The Products are described in CED's catalogue and on CED's website (<http://ced.co.uk/>) as modified by any applicable Specification.

3.2 All images of the Products on our website are for illustrative purposes only. Although CED has made every effort to display the colours accurately, CED cannot guarantee that a device's display of the colours accurately reflects the colour of the Products. The Products may vary slightly from those images.

3.3 To the extent that the Products are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify CED 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 reasonable professional costs and expenses) suffered or incurred by CED in connection with any claim made against CED for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the CED's use of the Specification. This Clause 3.3 shall survive termination of the Contract.

3.4 CED reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and CED shall notify the Customer in any such event.

4. CED's rights to make changes

4.1 CED may change its Products:

- (a) to reflect changes in relevant laws and regulatory requirements; and
- (b) to implement minor technical adjustments and improvements.

4.2 In addition, CED may make further changes to the Products or to these Terms, but if CED does so it shall notify the Customer providing the Customer with an opportunity to contact CED to end the Contract before such changes take effect and receive a refund for any Products paid for but not yet received.

5. Delivery

5.1 The costs of delivery shall be provided to the Customer during the order process.

5.2 CED shall:

- (a) if the Products are goods, deliver them to the Customer as soon as reasonably possible after the Order is accepted by CED, or alternatively at a later date as expressly agreed by the parties;
- (b) if the Products consist of a one-off purchase of digital content (including, without limitation, a software update), make the digital content available for download by the Customer as soon as CED accepts the Order, or if later, as soon as the digital content is ready for supply; and
- (c) if the Products are ongoing services or a subscription to receive digital content, supply the services or digital content to the Customer until either the services are completed or the subscription expires (if applicable) or the Customer ends the Contract as described in Clause 11 or CED ends the contract by written notice in accordance with Clause 11.

5.3 Where the Products are goods, CED shall ensure that each delivery of the Products is accompanied by a delivery note that shows the date of the Order, all relevant Customer and CED reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered.

5.4 Where the Products are goods, CED shall deliver the Products to the location set out in the Order or such other location as the parties may agree (the "**Delivery Location**") at any time after CED notifies the Customer that the Products are ready.

5.5 Delivery is completed on the completion of unloading the Products at the Delivery Location.

- 5.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. CED shall not be liable for any delay in delivery of the Products caused by a Force Majeure Event or the Customer's failure to provide CED with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.7 If CED fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. CED shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide CED with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.8 Where the Products are goods, if the Customer fails to accept delivery of the Products within three Business Days of CED notifying the Customer that the Products are ready, then, except where such failure is caused by a Force Majeure Event or CED's failure to comply with its obligations under the Contract in respect of the Products, delivery of the Products shall be deemed to have been completed at 9.00am on the third Business Day after the day on which CED notified the Customer that the Products were ready.
- 5.9 If ten Business Days after the day on which CED notified the Customer that the Products were ready for delivery the Customer has not accepted actual delivery of them, CED may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Products.
- 5.10 CED may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.11 The Customer shall own the Products which are goods once CED has received payment in full.
- 5.12 CED may have to suspend the supply of a Product to:
- (a) deal with technical problems or make minor technical changes;
 - (b) update the Product to reflect changes in relevant laws and statutory requirements;
or
 - (c) make changes to the Product as requested by the Customer or as notified by CED to the Customer in accordance with Clause 4.
- 5.13 If the Customer does not pay CED for the Products in accordance with Clause 9 of these Terms, and fails to make payment within 10 Business Days of CED notifying the Customer that payment is due, CED may suspend supply of the Products until the outstanding amounts are paid.

6. Quality

- 6.1 CED warrants that on delivery, and for a period of 36 months from the date of delivery (the "**Warranty Period**"), the Products shall:

- (a) conform in all material respects with the Specification; and
- (b) be free from material defects in design, material and workmanship.

6.2 Subject to Clause 6.3, if:

- (a) the Customer gives notice in writing to CED during the Warranty Period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in Clause 6.1;
- (b) CED is given a reasonable opportunity of examining the Products; and
- (c) the Customer (if asked to do so by CED) returns the Products to CED's place of business at the Customer's cost;

CED shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

6.3 CED shall not be liable for the Products' failure to comply with the warranty set out in Clause 6.1 if:

- (a) the Customer makes any further use of such Products after giving notice in accordance with Clause 6.2;
- (b) the defect arises because the Customer failed to follow CED's instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of CED following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Products without the written consent of CED;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 Except as provided in this Clause 6, CED shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in Clause 6.1.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 The Products shall not be authorised for use as critical components in life support systems and accordingly CED gives no warranty regarding the suitability of the Products for that purpose, save for where the Customer has obtained the prior written consent of CED for such use.

6.7 These Terms shall apply to any repaired or replacement Products supplied by CED.

7. Title and Risk

7.2 The risk in the Products shall pass to the Customer on completion of delivery.

7.2 Title to the Products shall not pass to the Customer until CED receives payment in full (in cash or cleared funds) for the Products.

7.3 Until title to the Products has passed to the Customer, the Customer shall:

- (a) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as CED's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify CED immediately if it becomes subject to any of the events listed in Clause 11.1(b) to Clause 11.1(d); and
- (e) give CED such information as CED may reasonably require from time to time relating to:
 - (i) the Products; and
 - (ii) the ongoing financial position of the Customer.

7.4 At any time before title to the Products passes to the Customer, CED may require the Customer to deliver up all Products in its possession and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

7.5 Where the Products are goods, in the event that any Products are damaged in transit, CED shall replace free of charge to the Customer those goods, provided that:

- (a) it is proved to the satisfaction of CED that the Products were damaged in transit; and
- (b) the Customer notifies CED of the damage in writing, accompanied by photographic evidence:
 - (i) within such time so as to enable CED to comply with the Carrier's terms and conditions of carriage relating to damage in transit;
 - (ii) within such time so as to enable CED to comply with any conditions of any insurance policy which may be in place from time to time covering such damage; and

(iii) in any case, within seven days of delivery.

8. If there is a problem with the product

If the Customer has any questions or complaints about the Products, please contact CED by:

- (a) telephone at 01223 420186 (or from North America, at 1 800 345 7794);
- (b) email at info@ced.co.uk; or
- (c) post at Cambridge Electronic Design Limited, Technical Centre, 139 Cambridge Road, Milton, Cambridge, CB24 6AZ.

9. Price and Payment

9.1 The price of the Products shall be set out in the Order, or, if no price is quoted, the price set out in CED's published price list in force as at the date of delivery.

9.2 CED reserves the right, by giving written notice to the Customer at any time before delivery, to increase the price of the Products to reflect any increase in the cost of the Products that is due to:

- (a) any factor beyond CED's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give CED adequate or accurate information or instructions.

9.3 The price of the Products:

- (a) excludes amounts in respect of VAT, which (where applicable) the Customer shall additionally be liable to pay to CED at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Customer.

9.4 If the rate of VAT changes between the Customer's order date and the date on which CED supplies the Products, CED shall adjust the rate of VAT payable by the Customer, unless the Customer has already paid for the Products in full before the change in the rate of VAT takes effect.

9.5 CED may invoice the Customer for the Products on or at any time after the completion of delivery.

9.6 The Customer shall pay each invoice submitted by CED:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by CED and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by CED, and

time for payment shall be of the essence of the Contract.

9.7 If the Customer fails to make a payment due to CED under the Contract by the due date, then, without limiting CED's remedies under Clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Limitation of liability

10.1 CED has obtained insurance cover in respect of its own legal liability that may arise from the supply of the Products. The limits and exclusions in this Clause 10 reflect the insurance cover CED has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

10.2 The restrictions on liability in this Clause 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

10.4 Subject to Clause 10.3, CED's total liability to the Customer shall not exceed £50,000.

10.5 Subject to Clause 10.3, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;

- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

10.6 If defective digital content which CED supplies to the Customer damages a device or digital content belonging to the Customer and this is caused by the failure of CED to use reasonable care and skill CED shall either repair the damage or pay the Customer compensation. However, CED shall not be liable for damage which the Customer could have avoided by following the advice of CED to apply an update offered to the Customer free of charge or for damage which was caused by the Customer failing to correctly follow installation instructions or to have in place the minimum system requirements advised by CED.

10.7 This Clause 10 shall survive termination of the Contract.

11. Termination

11.1 Without limiting its other rights or remedies, CED may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

11.2 Without limiting its other rights or remedies, CED may suspend provision of the Products under the Contract or any other contract between the Customer and CED if the Customer becomes subject to any of the events listed in Clause 11.1(b) to Clause 11.1(d), or CED reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

11.3 Without limiting its other rights or remedies, CED may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

- 11.4 On termination of the Contract for any reason the Customer shall immediately pay to CED all of CED's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, CED shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 11.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. Force Majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

13. General

13.1 Assignment and other dealings.

- (a) CED may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of CED.

13.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 13.2(b).
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 13.2; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13.3 Entire Agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

13.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.5 Waiver. 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this Clause 13.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.7 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address specified the Order.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;

- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 13.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13.8 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

13.9 Governing Law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

13.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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