

EMB Power Limited: Terms and Conditions for the Supply of Goods

The customer's attention is drawn in particular to the provisions of clauses 10, 6.4, 6.5, 7.3, and 7.4 which limit our liability to you.

1. INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: the terms and conditions for the supply of the Goods set out in this document (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer as set out in the Contract and/or the Quotation as amended from time to time in accordance with clause 13.4.

Contract: the contract between EMB and the Customer for the sale and purchase of the Goods in accordance with these Conditions, the Quotation, and the written acceptance of the Order.

Customer: the person or firm who purchases the Goods from EMB.

Delivery Location: has the meaning given in clause 6.2.

EMB: The supplier, EMB Power Limited (registered in England and Wales with company number 10640279).

Force Majeure Event: any cause beyond the affected party's reasonable control including, without limitation, any act of God, riots or insurrections, acts of terrorism, war (whether declared or not), civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, acts of destruction, computer failure due to software viruses and other malfunctions, import or export regulations, strike lock-out or trade dispute (whether involving its own employees or those of any other person) or other industrial disturbances, difficulties in obtaining labour or materials, breakdown of machinery, fire, flood or unavoidable accident.

Goods: the goods (or any part of them), including Software, as set out in the Order Acknowledgement.

Licence: the licence for the Software, as set out in clause 4.

Order: the Customer's order for the Goods, as set out in the Customer's written acceptance of EMB's quotation, or overleaf, as the case may be.

Order Acknowledgement: EMB's written acceptance of the Order.

Maintenance Releases: releases of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by EMB in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product

Production: non development or non-prototype hardware or software

Prototype: hardware or software identified as prototype or X-Sample products (A-Sample, B-Sample and so on).

Software: the computer programs listed on the Order Acknowledgement, which includes any Maintenance Releases as provided by EMB to the Customer under the terms of the Licence.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and EMB.

Third-Party Additional Terms: the additional terms and conditions set out in Schedule 1 and Schedule 2 relating to Third-Party Hardware or Software supplied by EMB.

Third-Party Software: the third-party software identified in the **Order Acknowledgement**.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) 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.
- (e) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

- 2.1 These Conditions 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 Goods in accordance with these Conditions. The Customer is responsible for ensuring that

the terms of the Order and any applicable Specification are complete and accurate.

- 2.3 The Order shall only be deemed to be accepted when EMB issues an Order Acknowledgement, 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 EMB and any descriptions or illustrations contained in EMB's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by EMB shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3. GOODS

- 3.1 The Goods are described in the Specification.
- 3.2 The Customer shall indemnify EMB 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 professional costs and expenses) suffered or incurred by EMB in connection with any claim made against EMB for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with EMB's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements, or in response to changes to third party component parts.

4. SOFTWARE LICENCE

- 4.1 In consideration of the price paid by the Customer to EMB for the Goods, receipt of which EMB hereby acknowledges, EMB grants to the Customer:
 - (a) a non-exclusive licence for the Software (excluding any Maintenance Releases) in accordance with the Contract; and
 - (b) a non-exclusive licence for any Maintenance Releases in accordance with the Contract for the terms set out on the EMB webstore.
- 4.2 In relation to scope of use of the Software:
 - (a) for the purposes of clause 4.1, use of the Software shall be restricted to use of the Software in object code form for the purpose of using the Goods.

- (b) the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.
 - (c) the Customer may not use the Software other than as specified in clause 4.1, clause 4.2(a), clause 4.2(b) and the Third Party Terms without the prior written consent of EMB, and the Customer acknowledges that additional fees may be payable on any change of use approved by EMB.
 - (d) the Customer may make a single backup copy of the Software for its lawful use. The Customer shall record the location of the backup copy of the Software and take steps to prevent unauthorised copying.
 - (e) except as expressly stated in this clause 4, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless EMB is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request EMB carries out such action or provide such information (and shall meet EMB's reasonable costs in providing that information) before undertaking any such reduction.
 - (f) any Third-Party Software shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the Third-Party Software shall be subject to the Customer agreeing to and signing the Third-Party Additional Terms.
 - (g) the Customer shall indemnify and hold EMB harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Additional Terms howsoever arising.
 - (h) EMB may treat the Customer's breach of any Third-Party Additional Terms as a breach of this licence.
- 4.3 The Customer may not use any such information provided by EMB or obtained by the Customer during any such reduction permitted under clause 4.2(e) to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 4.4 The Customer shall not:
- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
 - (b) allow the Software to become the subject of any charge, lien or encumbrance;

- (c) deal in any other manner with any or all of its rights and obligations under these terms and conditions; and

without the prior written consent of EMB, such consent not to be unreasonably withheld or delayed.

- 4.5 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.
- 4.6 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 4.7 Notwithstanding clause 13.2, a party assigning any or all of its rights under these terms and conditions may disclose to a proposed assignee any information in its possession that relates to these terms and conditions or its subject matter, the negotiations relating to it and the other party which is necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 4.7 shall be made until notice of the identity of the proposed assignee has been given to the other party.
- 4.8 The Customer shall:
 - (a) keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to EMB on request from time to time;
 - (b) notify EMB as soon as it becomes aware of any unauthorized use of the Software by any person;
 - (c) pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which EMB would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 9.7, from such date to the date of payment.
- 4.9 The Customer shall permit EMB to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that EMB provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

5. MAINTENANCE RELEASES

- 5.1 Where specified in the Order Acknowledgement, EMB will provide the Customer with all Maintenance Releases generally made available to its customers under the licence set out in clause 4.1.
- 5.2 EMB warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

5.3 The Customer shall not use Software releases or Maintenance Releases earlier than the release level currently supported.

6. DELIVERY

6.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, any relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if EMB requires the Customer to return any packaging materials to EMB, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as EMB shall reasonably request. Returns of packaging materials shall be at EMB's expense.

6.2 Unless otherwise agreed in writing EMB shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree **Delivery Location** at any time after EMB notifies the Customer that the Goods are ready.

6.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

6.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide EMB with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.5 If EMB fails to deliver the Goods, 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 Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide EMB with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.6 If the Customer fails to accept delivery of the Goods within **[three Business Days]** of EMB notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or EMB's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at **[9am on the fourth Business Day]** after the day on which EMB notified the Customer that the Goods were ready; and
- (b) EMB shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

- 6.7 If **fourteen** Business Days after the day on which EMB notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, EMB may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 6.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

7. QUALITY

- 7.1 The Supplier warrants that on delivery, and for a period of **12** months from the date of delivery (**warranty period**), the Goods shall:
- (a) conform in all material respects with the Specification;
 - (b) be free from material defects in design and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

7.2 Subject to clause 7.3, if:

- (a) the Customer gives notice in writing to EMB during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1;
- (b) EMB is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by EMB) returns such Goods to EMB's place of business at the Customer's cost,

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

- 7.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 7.2;
 - (b) the defect arises because the Customer failed to follow EMB's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of EMB following any drawing, design or Specification supplied by the Customer;
 - (d) the defect arises as a result of any use of all or part of the Goods in a manner which is outside of its intended purpose or application and

- (e) the defect arises as a result of any application software specified, created or compiled by the Customer;
 - (f) the Customer alters or repairs such Goods without the written consent of EMB;
 - (g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (h) the defect arises as a direct result of a material defect in any component parts of the Goods that were produced by a third party;
 - (i) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4 Except as provided in this clause 7, EMB shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.5 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.
- 7.6 These Conditions do not apply to **Prototype** products which shall be exempt from warranty unless otherwise specified by prior written agreement.
- 7.7 These Conditions shall apply to any repaired or replacement Goods supplied by EMB.

8. TITLE AND RISK

- 8.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 8.2 Title to the Goods shall not pass to the Customer until EMB receives payment in full (in cash or cleared funds) for the Goods and any other goods that EMB has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 8.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as EMB's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify EMB immediately if it becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(d); and
 - (e) give EMB such information as EMB may reasonably require from time to time relating to:

- (i) the Goods; and
- (ii) the ongoing financial position of the Customer.

9. PRICE AND PAYMENT

- 9.1 Prices contained in quotations are firm for only **30 days** from the date of the quotation unless modified in writing by EMB prior to the Buyer's acceptance.
- 9.2 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in EMB's published price list in force as at the date of delivery.
- 9.3 The Supplier may, by giving notice to the Customer, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond EMB'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 Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give EMB adequate or accurate information or instructions.
- 9.4 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to EMB 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 Goods, which shall be invoiced to the Customer.
- 9.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 9.6 The Customer shall pay each invoice submitted by EMB:
- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by EMB and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by EMB, and
- time for payment shall be of the essence of the Contract.
- 9.7 If the Customer fails to make a payment due to EMB under the Contract by the due date, then, without limiting EMB's remedies under clause 11 (Termination), 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 8.7

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 The limits and exclusions in this clause reflect the level of protection offered to EMB by the manufacturers and suppliers of the third-party components which make up the Goods. The Supplier has taken steps to ensure that the component parts are of satisfactory quality, but it is the Customer's responsibility to make 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, EMB's total liability to the Customer shall not exceed the amount paid by the Customer for the Goods.
- 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;
 - (g) indirect or consequential loss;
 - (h) loss arising from any use of all or part of the Goods in a manner which is outside of its **intended purpose or application**; and

- (i) loss arising from any application software specified, created or compiled by the Customer or otherwise arising from any alteration of the Goods by the Customer.

10.6 This clause 10 shall survive termination of the Contract.

11. TERMINATION

11.1 Without limiting its other rights or remedies, EMB 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 **14** 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, EMB may suspend provision of the Goods under the Contract or any other contract between the Customer and EMB if the Customer becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(d), or EMB 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, EMB 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 EMB all of EMB's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, EMB 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 time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for **3 months**, 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) The Supplier 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 EMB.

13.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, 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 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 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) This 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 in **the Order Acknowledgement.**
 - (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt; and
 - (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; and
 - (iii) if sent by, 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 this Contract or its subject matter or formation.

SCHEDULE 1: THIRD PARTY ADDITIONAL TERMS

New Eagle End Use Declaration

Dear Customer: New Eagle items that you have requested, purchased or intend to purchase are subject to U.S. export regulations and laws. These laws and regulations include, but are not limited to, the U.S. Export Administration Regulations (EAR) administered by the U.S. Department of Commerce and the Commerce Control List (the "CCL") therein, the International Traffic in Arms Regulations (ITAR) administered by the U.S. Department of State and the United States Munitions List (the "USML") therein, as well as other U.S. export control regulations and laws, including the Embargo and Sanctions Regulations issued by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC). We must obtain certain information about your company and the intended end-use / end-user of these items, in order to comply with these various U.S. regulations.

To facilitate our proper export compliance and documentation, we require that your company provide a signed End-Use Statement regarding the end-use and end-users of the items that we send you. Please send any questions and your completed End-Use Statement via email to orders@neweagle.net,

For Your Information: The end-user is defined as the ultimate consignee who will use or receive the item. (NOTE: This is not a distributor, freight forwarder, broker or shipping agent.) The end-use is defined as, "the final item that our products or information will be integrated into." Some examples of end-use products can include aircraft, land vehicles, appliances, etc. We will keep this End-Use Statement on file for a period of two (2) years. If the end-user or end-use has changed, or if the two-year period has expired, you must complete and return to us a new End-Use Statement prior to the delivery of any future items or services.

END-USE STATEMENT

We acknowledge that the export/re-export/re-transfer of commodities, software, and/or technical data ("Restricted Items") that we have requested, purchased, or intend to purchase from New Eagle are subject to the U.S. export control laws and regulations, including, but not limited to, the Export Administration Regulations ("EAR"), the International Traffic in Arms Regulations ("ITAR") and the Embargo and Sanction Regulations administered by the U.S. Department of the Treasury, Office of Foreign Assets Controls ("OFAC"), among other rules and regulations. We agree and undertake to comply with all applicable U.S. export control laws and regulations. Specifically, we make the following certifications and assurances:

1. **We certify** that we will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any Restricted Item to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited.

2. **We certify** that we will use the export-controlled items listed below for (check one): **Civil End-Use*** **Military End-Use**

Note: Reviews of "civil end-use" must include both the activities of the end user as well as the end use of the items to be exported. The term "military end user" is not limited to traditional military end users such as army or navy but applies to any person or entity including private companies, universities and research institutes whose actions or functions are intended to support "military end uses." Therefore, even if the export is for purely civil end uses, a license would be required if the end user is a "military end user."

***Military end use:** incorporation of an item into a military item controlled on the ITAR; incorporation of an item into items classified under military ECCNs; or any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, "development," or "production," of military items either described on the USML or classified under military ECCNs.

***Military end user:** the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support 'military end uses' as noted above.

List P.O. number or item designations:

Describe the End-Use Application:

3. **We certify** that we will not use New Eagle items for any nuclear, biological or chemical weapons, or the missile systems that deliver them; for the design, development, production, testing, stockpiling or use of any weapons of mass destruction; or for any other use that the U.S. government prohibits.

4. **We certify** that we will immediately notify New Eagle if our company is, or becomes, listed in any Restricted Parties List, or if our export privileges are otherwise denied, suspended or revoked, in whole or in part, by any U.S. Government entity or agency.

5. **We acknowledge** that it is our responsibility to obtain any license for export/re-export of export-controlled Items, or to transmit information regarding Restricted Items, as may be required by U.S. export regulations and laws.

6. **We acknowledge** that we will indemnify and hold New Eagle harmless for all damages, costs, fines, penalties, attorney fees, and all other expenses arising from a U.S. Government claim or demand that we failed to comply with stated statutes and regulations.

This Certification shall survive the term and termination of the relationship between New Eagle and the Ultimate Consignee.

STATEMENT OF ULTIMATE CONSIGNEE AND PURCHASER – Please Make Sure to Complete Both Sides

We certify by signature that all of the facts contained in this statement are true and correct to the best of our knowledge and will apply to the disposition of products purchased from New Eagle. We acknowledge the making of any false statements or concealment of any material fact in connection with this statement may result in denial, in whole or in part, of participation in U.S. exports and re-exports. The undersigned certify that we are responsible officials of our organizations and that we are authorized to sign this End-Use Statement on their behalf.

PURCHASER

Company Name:
Address:
City: St: Country:
Print (or type) Name:
Title: Date:

X

Signature of Authorized Company Representative

ULTIMATE CONSIGNEE (e.g., Drop Ship) Same as Purchaser

Company Name:
Address:
City: St: Country:
Print (or type) Name:
Title: Date:

X

Signature of Authorized Company Representative

PROJECT OPTION: Apply this form to a **PROJECT** (for future purchases) **Project Name:**
Est Completion Date: Est # of Orders: Parts used:

QUOTE APPROVAL: By selecting "I Agree", you accept the provided quotation and have read and agree to New Eagle's Terms and Conditions of Sale. NEW EAGLE, LLC fully complies with all U.S. export control laws and regulations ("U.S. Export Controls"), including without limitation the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), and the Foreign Asset Control Regulations administered by the Office of Foreign Assets Control (OFAC) in the U.S. Department of the Treasury. All products, technical data, software or technology to be exchanged between NEW EAGLE, LLC and your company must be handled in compliance with U.S. Export Controls.

I Agree

Schedule 2: Third party warranties

New Eagle Warranty

A production supply agreement (PSA) is recommended to apply for potential future warranty returns. A PSA would include information on the use of the I/O and intended/designed/specified mode of operation of this I/O.

New Eagle does not know how a customer may apply the module and thus does not provide warranty without an express and specific production supply agreement based on the cumulative operating mode (which requires manufacturer testing/approval to validate).

Most products sold as engineering prototypes do not have warranty. The details are covered in the terms and conditions of sale.

New Eagle Engineering is available to assist to validate your application to the module design, hence providing the ability to gain a warranty for your recurring production use.