

EUROTHERM LIMITED GENERAL TERMS & CONDITIONS OF SALE OF GOODS AND SERVICES AND LICENSE OF SOFTWARE

Clause 1: Definitions

1.1 "Company" shall mean the company which has executed a Purchase Order

1.2 "Goods" shall mean all products, equipment, materials, spare parts, hardware, supplies, and accessories to be supplied as set out in a Purchase Order.

1.3 "Party" shall mean Seller or Company, as the context requires and "Parties" shall be construed accordingly.

1.4 "Purchase Order" shall mean any purchase order, issued subject to these terms and conditions and with related attachments including without limitation, any software licenses, pricing schedules, and delivery schedules, which shall describe the Goods, Software or Services to be supplied by Seller to the Company and the Specifications. Purchase Orders agreed upon from time to time between Seller and Company shall constitute separate contracts that incorporate these terms and conditions by reference and shall be governed by these terms and conditions.

1.5 "Seller" shall mean Eurotherm Limited

1.6 "Services" shall mean the provision of testing, assessment, per-diem or specific time-limited engineering services, installation, start-up, configuration and any development of application programs, customization, implementation, training and any other services set out in the Purchase Orders, excluding maintenance and support services which shall be rendered under a separate agreement.

1.7 "Software" shall mean computer software programs in object code, instructions manuals, specifications and related documentation in written or electronic form, for which Seller grants Company a license under a Purchase Order but excluding third party software, its related instructions manuals and documentation.

1.8 "Specifications" shall mean the Seller standard specifications applicable to the Goods and/or Software at the time of issue of a Purchase Order or the requirements set out in a Purchase Order and with respect to Services, the agreed statement(s) of work containing a description of the Services to be rendered.

1.9 "Third Party Products" shall mean products and or software of a third party vendor.

1.10 "Warranty Period" shall mean the period which Goods, Software and Services are respectively guaranteed by Seller. Products are guaranteed for the period of 2 years from date of shipment by Seller, except mechanical paper recorders, where the period shall be one year from date of shipment.

Clause 2: Sole Agreement

Any Purchase Order shall constitute the entire understanding of the parties and supersedes all previous agreements, statements and understandings from or between the parties regarding the subject matter of the Purchase Order.

Clause 3: Price and Payment Terms

3.1 Company is responsible for any applicable taxes, including sales, use, GST, VAT, customs, or excise tax, excluding only those taxes based upon the net income of Seller.

3.2 Seller shall submit invoices to Company upon achievement of the payment milestones set out in the Purchase Order.

3.3 Company shall pay any invoices in the invoice currency (ies) within thirty (30) calendar days from the date of invoice.

3.4 If Company fails pay any invoice in accordance with this Clause 3, then Seller shall be entitled to suspend performance or reduce its rate of performance under any Purchase Order until such payment is made and Company shall be liable for any costs of such suspension or reduction in rate of performance and Seller shall be entitled to an extension of time.

3.5 Without prejudice to any other rights of Seller, if Company fails to make payment in accordance with any Purchase Order, Company shall be liable to pay interest to Seller on the amounts unpaid until such payment is made. The rate of interest shall be 2% above the then base lending rate of the Bank of England.

Clause 4: Delivery, Title and Risk of Loss

4.1 Title to all Goods, except for Software whose title remains at all times with Seller, shall pass to Company upon full payment of the Purchase Order.

4.2 Delivery shall be Ex-works (Incoterms 2000), Seller's facility.

Clause 5: Receiving, Inspection and Acceptance

5.1 Company shall be responsible for receiving, installing, starting up and maintaining all Goods.

5.2 If Company fails to notify Seller of any material non-conformities with the Specifications within a reasonable period following delivery, not to exceed thirty (30) calendar days, or is using those Goods, Software or Services in a production environment or for the regular conduct of its business, the Goods, Software or Services shall be deemed accepted, without prejudice to the warranty provisions hereunder.

Clause 6: Force Majeure

Except for Company's payment obligations, neither Party shall be liable for delays caused by conditions beyond their reasonable control, provided notice thereof is given to the other Party as soon as practicable

Clause 7: Warranties for Goods, Software and Services

7.1 Seller warrants to Company that the Goods, Software and Services shall, at time of delivery, materially conform to the Specifications. If the Services are of an advisory nature, including any services performed on a time and materials basis, the Company shall remain the design authority and no specific result is guaranteed or assured.

7.2 Non-conforming Goods subject to a warranty claim shall be returned to the nearest Seller's repair facility, transportation charges prepaid for the account of the Company. Seller's obligation and Company's sole remedy under this Clause is, at Seller's option the repair or replacement, correction, of any non-conforming Goods, Software or part thereof. The repaired or replaced Goods shall be warranted by Seller for the remainder of the original Warranty Period or for three months, whichever is longer, free of charge and return-shipped to Company with transportation prepaid by Company. Seller shall not be responsible for any offshore transport costs.

7.3 The foregoing warranties do not apply to non-conformities caused by (i) Company's design or installation of the Goods and/or Software, (ii) modification or repair to the Goods and/or Software otherwise than as authorized in writing by Seller; (iii) handling, storage, use or maintenance of the Goods and/or Software in a manner or an environment inconsistent with the Specifications and/or instructions or recommendations of Seller; (iv) defect in Company's own products or software or use of the Goods and/or Software in combination with any Third Party Product not procured by Seller; (v) Company's failure to observe the payment terms under any Purchase Order or any other of its obligations under any Purchase Order; (vi) normal wear and tear; (vii) installation or wiring of the Goods and/or Software other than in accordance with Seller's instructions; (viii) transfer of the Software from the device on which it was originally installed; and/or (viii) any fault of the Company or its agents.

7.4 Except as expressly set out in this Clause 7, all warranties whether express or implied (including without limitation any implied warranty as to merchantability, operability or fitness for purpose) are excluded.

Clause 8: Third Party Products

8.1 The warranties set out in Clause 7 do not apply to Third Party Products. Seller shall bear no responsibility for the performance, repair or warranty of any of Company's software or hardware product or any Third Party Products and Company shall look solely to third party vendor for all remedies and support with regard to such Third Party Products. If such Third Party Product is expressly procured by Seller to Company under a Purchase Order, that Third Party Product shall be warranted only in accordance with the warranties given to Seller in respect thereof by the relevant third party vendor and to the extent that Seller has the right to assign or transfer such warranties.

8.2 If Third Party Products are supplied by the Seller under any Purchase Order, such supply is made on a "pass-through" basis only and is subject to the terms and conditions of the third party vendor, including but not limited to warranties, licenses, indemnities, limitation of liability, prices and changes thereto. Third Party Products are quoted subject to price changes imposed by third party vendors between the date of Purchase Order encompassing such Third Party Products and the date of Seller's invoice related to that Third Party Product

Clause 9: Laws and Dispute Resolution

9.1 The Purchase Order shall be governed by and construed in accordance with the laws of England, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Purchase Order.

9.2 Any dispute arising out of or in connection with any Purchase Order, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the ICC, which Rules shall be deemed to be incorporated by reference into this Clause 9.2. The number of arbitrators shall be one. The seat of arbitration shall be London, UK. The language to be used in arbitral proceedings shall be English

Clause 10: Intellectual Property and Software License

10.1 All rights, title or interest in any patent, trademark, service marks, copyrights, trade secrets, ideas, concepts, know-how, techniques or other proprietary right forming part of the Goods, Software or Services shall remain vested in Seller (or third party owner) and shall not be transferred to Company.

10.2 Company shall be granted a non-exclusive, non-transferable, limited license for the use of the Goods, Software and Services for the purposes provided.

10.3 Seller's Software licensed to Company may contain components that are owned by third parties. The third party owner shall retain exclusive right to its firmware and software. Use of such third party components may be subject to restrictions contained in the third party's end-user license agreement in addition to the conditions set forth herein.

10.4 Company may not without Seller's prior written express consent (i) copy, modify, sublicense, loan or transfer in any manner the Software licensed herein; (ii) create derivative works based on the Software licensed herein; (iii) subject the Software licensed herein to translating, decompiling, disassembling, reverse engineering, reverse engineering, emulating or performing any other operation on the Software, unless the operation is specifically authorized by law. Company agrees to defend, indemnify and hold harmless Seller from all damages and third party claims arising from unauthorized use or transfer of the Software.

10.5 Seller shall defend, indemnify and save harmless Company from and against any third party claims, suits, judgments, court costs, reasonable attorney's fees and other liabilities, demands or losses (altogether "Liabilities") to the extent such Liabilities result from an infringement due to the Services and/or the Goods, Software's design or construction, of a patent or copyright owned by a third party in the country of manufacture of such Goods and/or Software or in the country of performance of the Services at the time of execution of the relevant Purchase Order under which the alleged infringement has occurred, provided that (i) Seller shall be promptly notified of the bringing of said suits; (ii) Seller shall be given the sole control of the defense and all related settlement negotiations; (iii) Company agrees to fully assist Seller in the defense of the claim and (iv) Company complies with Seller's direction to cease any use of the Goods or Software which in Seller's reasonable opinion, is likely to constitute an infringement. Seller shall not be responsible for any settlement made without its consent.

10.6 The foregoing obligations do not apply when the claim of infringement results from or is related to: (i) Goods and/or Software provided pursuant to Company's designs, drawings or specifications; (ii) Goods and/or Software stored, used or maintained otherwise than in accordance with Seller's instructions or recommendations or other than for the Seller's internal business purpose; (iii) claims of infringements resulting from combining Goods or Software provided hereunder with any other item not furnished by Seller; (iv) modifications to the Goods or Software without prior written consent of Seller; (v) parts supplied or designed by Company or third parties; or (v) Company's failure to use corrections or enhancements made available by Seller.

10.7 In case said results of Services, Software or Goods, or any part thereof, is in such suit held to constitute infringement and/or its use is enjoined, the Seller shall, at its own expense and option either: (i) procure for the Company a royalty-free license to continue using such Software, results of Services or Goods, or (ii), replace same with substantially equal but non-infringing equipment or modify it so it becomes non-infringing, provided that no such replacement or modification shall in any way amend or relieve Seller of its warranties and guarantees set forth in these terms and conditions. In the event Seller is unable to do either of the foregoing, the allegedly infringing item shall be returned to Seller and Seller's maximum liability shall be to refund to Company the amount paid for such item, less a reasonable depreciation for use and damage.

10.8 This Clause 10 states the Parties' entire liability and sole remedy with respect to infringement or claims thereof.

Clause 11: Confidentiality

11.1 "Confidential Information" shall mean the Software and any and all information in any form that each Party provides to each other in the course of any Purchase Order and that either (i) has been marked as confidential; or (ii) is of such nature that a reasonable person would treat as confidential under like circumstances. Confidential Information does not include work products resulting from the Services performed hereunder and information which (i) is already known to the other Party at the time of disclosure; (ii) is independently developed without the benefit of the other's Confidential Information; (iii) is received from a third party that is not under any confidentiality obligation towards the owner of the information; or (iv) has entered the public domain through no fault of the recipient.

11.2 Neither Party shall, except with respect to their employees, contractors or agents with a need to know for purposes of any Purchase Order, disclose to any person any Confidential Information of the other Party without the other Party's prior written consent, except where Confidential Information may be disclosed by law.

Clause 12: Indemnification and Limitation of Liability

12.1 Seller shall indemnify, defend and hold Company harmless against third party claims (including without limitation, the Parties' employees) for personal injury, death or loss or damage to property caused by Seller's negligence in the performance of its obligations hereunder, provided (i) Seller is entitled to exclusively control the defense against the claim; (ii) Seller is immediately notified of such claim and (iii) Company provides reasonable assistance in the defense of the claim and does not enter into any settlement or make any concession without the Seller's prior written approval.

12.2 In no event shall Seller have any liability under any Purchase Order for any special, incidental, punitive, exemplary, indirect or consequential damages, including but not limited to lost profits, loss of production, loss of revenues, interest, capital, financing, good will, use, business reputation, opportunity or productivity, howsoever arising, even if Seller has been advised of the possibility of such damages.

12.3 Seller's liability under any Purchase Order for any direct damages arising out of or in any way related to the Purchase Order (whether arising under tort, negligence, contract, warranty, strict liability or any other cause or combination of causes) shall in no event exceed the specific price of the goods, software and/or services provided under the Purchase Order. With respect to site based services, the maximum aggregate liability of Seller for direct damages under the Purchase Order giving rise to liability shall not exceed the amount equivalent to one engineer's work day. Nothing in any Purchase Order shall exclude or limit the liability of either Party for death or personal injury caused by negligence.

Clause 13: Termination for Default

13.1 Either Party may terminate any outstanding Purchase Order for default if the other has materially breached any of its obligations under the Purchase Order and has not cured the breach within thirty (30) days of receipt of a notice from the other Party.

13.2 Termination of a Purchase Order by either Party shall not affect continuing performance by the Parties of their respective obligations under a different Purchase Order, unless otherwise agreed upon by the Parties.

Clause 14: Assignment

Neither Party shall assign or transfer any Purchase Order without the other Party's express prior written consent, which shall not be unreasonably withheld.

Clause 15: Non-Waiver

Failure by either Party to insist upon strict performance of any of the terms and conditions hereof or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify the other in the event of breach shall not be construed as a waiver of any provision of any Purchase Order. No waiver by a Party of a right or default under any Purchase Order shall be effective unless in writing.

Clause 16: Severability and Survivorship

16.1 If any provision or portion of a Purchase Order shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, that provision or portion of the Purchase Order shall be deemed omitted and the remaining provisions and portions shall remain in full force and effect.

16.2 Clauses 1, 3, 9, 10, 11, 12 and 17 of these terms and conditions shall remain in full force and effect after completion of a Purchase Order, expiration, cancellation or termination of any Purchase Order for the period specified herein, or if not specified then for the maximum time allowed by law.

Clause 17: Third Party Rights

The Parties do not intend that any term of a Purchase Order should be enforceable, by virtue of the Contracts (Rights of Third Parties) the Purchase Order

Clause 18: Independent Contractor

Nothing in a Purchase Order shall be deemed to constitute a partnership, joint venture, or fiduciary relationship between Company and Seller, nor shall anything in a Purchase Order be deemed to create an agency relationship between Company and Seller. Neither Company nor Seller shall be or become liable or bound by any representation, act or omission whatsoever of the other.

Clause 19: Global Export Control

The deliverables provided by Seller under this Agreement contain or may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. Buyer acknowledges and agrees that the supply, assignment and/or usage of the products, software, services, information, other deliverables and/or the embedded technologies (hereinafter referred to as "Deliverables") under this Agreement shall fully comply with related applicable US, EU and other national and international export control laws and/or regulations. Unless applicable export license/s has been obtained from the relevant authority and the Seller has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. Buyer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons. If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit Seller from fulfilling any order, or would in Seller's judgment otherwise expose Seller to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, Seller shall be excused from all obligations under such order and/or this Agreement.