



# Terms & Conditions

## TERMS AND CONDITIONS

This document outlines the terms and conditions of sale for Goods sold by Adder Technology Limited.

### 1. INTERPRETATION

1.1 Capitalised terms are defined at clause 12.11.

### 2. BASIS OF CONTRACT

2.1 In consideration of payment in full and in accordance with clause 7, the Customer and Adder Technology agree that

- the Hardware shall be sold; and
- the Software shall be licensed to the Customer on the terms set out in these Conditions.

2.2 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 trade, custom, practice or course of dealing.

2.3 The Purchase 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 Purchase Order and any applicable Specification are complete and accurate. The Purchase Order shall only be deemed to be accepted when Adder Technology issues its acceptance of the Purchase Order, at which point the Contract shall come into existence.

2.4 Any samples, drawings, descriptive matter, or advertising produced by Adder Technology and any descriptions or illustrations contained in Adder Technology's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

### 3. GOODS

3.1 The Goods are described in the Specification. Adder Technology reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

3.2 The Customer shall ensure that the any Goods received from Adder Technology under this Contract, will not be exported, diverted, transferred or otherwise disposed of in violation of any import or export legislation, either in their original form or after being incorporated into other items and shall be responsible for obtaining at their expense any licence or complying with any import legislation.

3.3 The Customer shall not disassemble, decompile, reverse engineer or convert the whole or any part of the Goods,

including but not limited to the Software, (except to the extent that such restriction on disassembly, decompiling or reverse engineering is prohibited by law and then the Customer shall provide Adder Technology with prompt written notice prior to any such action).

### 4. DELIVERY AND SOFTWARE LICENCE

4.1 Adder Technology shall deliver the Goods to the location set out in the Purchase Order or such other location as the parties may agree (**Delivery Location**).

4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Adder Technology 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 Adder Technology with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 In consideration of the payment in full and in accordance with clause 7, Adder Technology hereby grants to the Customer a non-exclusive, non-transferable right to use the Software on the Hardware for the purpose of operating the Goods.

### 5. LIMITED WARRANTY

5.1 Adder Technology warrants to the Customer that:

- on delivery, and for a period of 24 months from the date of delivery, the Hardware shall conform in all material respects with the Specification; and
- on delivery, and for a period of 30 days from the date of delivery, the Software shall conform in all material respects with the Specification, together the **Limited Warranty**.

5.2 Subject to clause 5.3 and provided that the Customer:

- within 3 Business Days of identifying a fault, gives notice in writing to Adder Technology during the Limited Warranty period and that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- first contacts Adder Technology for an Returns Authorisation Number which must be clearly visible on the returned package (items returned in packages

- not clearly showing a Returns Authorisation Number will be refused);
- (iii) insures such Goods for shipping at the Customer's cost; and
  - (iv) returns such Goods to Adder Technology's place of business at the Customer's cost, then Adder Technology shall, at its sole option, provide one of the following remedies:
  - (v) repair or facilitate the repair of any defective parts within a reasonable period of time, free of charge for the necessary parts and labour to complete the repair and resolve the Goods to its proper operating condition. Adder Technology will also pay the reasonable shipping costs necessary to return this Goods once the repair is complete; or
  - (vi) replace the Goods with a direct replacement or with similar Goods deemed by Adder Technology to perform substantially the same function as the original Goods; or
  - (vii) issue a refund of the original purchase price less depreciation to be determined based upon the age of the Goods at the time remedy is sought under the Limited Warranty.
- 5.3 Adder Technology shall not be responsible for any costs associated the removal or re-installation of the Goods from or into any installation. Adder Technology are not responsible for any costs associated with setting up the Goods and adjustment to any associated controls or programming required for a specific installation of the Goods.
- 5.4 Adder Technology shall not be liable for the Goods' failure to comply with the Limited Warranty set out in clause 5.1 in any of the following events:
- (i) the label bearing the serial number of the Goods has been removed or defaced;
  - (ii) the Goods have not been purchased through an authorised channel reseller of Adder Technology products;
  - (iii) the Goods have not been distributed by Adder Technology;
  - (iv) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - (v) the defect arises because the Customer failed to follow Adder Technology'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;
  - (vi) the Customer alters or repairs such Goods without the written consent of Adder Technology;
  - (vii) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (viii) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

The Limited Warranty does not apply to any damage, deterioration or malfunction resulting from any alteration, modification, improper or unreasonable use or maintenance, misuse, abuse, accident, neglect, exposure to excess moisture, heat, lightning strike, power surges earthquakes, flood or other acts of nature. Damage resulting from improper packing and shipping should be addressed to the carrier. The Limited Warranty does not cover any damage, deterioration or malfunction resulting from the installation or removal of the Goods from any installation. Any unauthorised tampering with the Goods, any repairs attempted by anyone

other than Adder Technology or a party authorised in writing by Adder Technology to make such repairs, or any other cause which does not relate directly to a defect in materials and/or workmanship of the Goods. The Limited Warranty does not cover cartons, equipment enclosures, cables or accessories used in conjunction with the Goods.

- 5.5 Except as provided in this clause 5, Adder Technology shall have no liability to the Customer in respect of the Goods' failure to comply with the Limited Warranty set out in clause 5.1.
- 5.6 Save as set out in this clause 5, to the fullest extent permitted by law, Adder Technology makes no express or implied warranty or representation concerning the Goods and therefore excludes all conditions, warranties and representations (express or implied), statutory or otherwise in respect of the Goods and any deliverable under this Contract.

## 6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer either when its agent collects from Adder Technology's warehouse or when delivery is made to the Customer.
- 6.2 Title to the Hardware shall not pass to the Customer until Adder Technology has received payment in full (in cash or cleared funds) for the Goods. Customer shall be entitled to use the Software in accordance with the software licence set out at clause 4.4 and as such, for the avoidance of doubt, title to Software shall not be passed to Customer at any time.
- 6.3 Notwithstanding delivery and passing of the risk in the Goods, legal and beneficial ownership of the Hardware shall remain with Adder Technology until Adder Technology has received the purchase price in full as well as any other payments due to Adder Technology. Until ownership passes the Customer shall hold the Hardware as bailee of Adder Technology and must keep the Hardware free from any charge lien or other encumbrance. Adder Technology shall be entitled at any time either to require the Customer to deliver the Goods to Adder Technology or allow Adder Technology (with or without prior notice) to enter the premises where the Goods are stored and repossess the same. All charges incurred by Adder Technology in either respect shall be the Customer's responsibility. If the purchaser purports to sell the Goods before payment is made to Adder Technology the proceeds of the sales shall belong to Adder Technology until payment in full has been received by Adder Technology.

## 7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Purchase Order, or, if no price is quoted, the price set out in Adder Technology's published price list in force as at the date of delivery.
- 7.2 Adder Technology may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (i) any factor beyond Adder Technology's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (iii) any delay caused by any instructions of the Customer or failure of the Customer to give Adder Technology adequate or accurate information or instructions.
- 7.3 Unless otherwise agreed in writing all prices for the Goods are quoted ex warehouse, inclusive of packing but exclusive of relevant taxes (including VAT) and delivery charges.

© Copyright 2014 Adder Technology Ltd. All brand names and trademarks are the property of their respective owners. LM-tandc\_2014\_2c\_v5314.indd

7.4 If the Customer has been granted a credit account, the Customer shall pay the invoice in full and in cleared funds within 30 days net from the date of invoice. If the Customer has not been granted a credit account, the Customer shall pay at the time of placing of the order. Payment shall be made to the bank account nominated in writing by Adder Technology. Time of payment is of the essence.

7.5 If the Customer fails to make any payment due to Adder Technology under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 2.5% per month and deliveries will be suspended. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Adder Technology may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Adder Technology to the Customer.

## 8. INTELLECTUAL PROPERTY RIGHTS

8.1 Except as expressly provided herein or as may be agreed in writing between the parties from time to time, the Customer will not receive any rights by implication or otherwise in any Goods received by them under the Contract. Unless otherwise explicitly agreed in writing, Adder Technology will retain:

- (i) all Intellectual Property Rights it possesses with regard to any and all design, process, manufacturing and other technologies used in or resulting from the development or production of the Goods; and
- (ii) title to and possession of all tooling, material or equipment Adder Technology uses in the manufacture, testing or assembly of the Goods furnished under the Contract. Neither the Customer nor any third party (whether by implication, operation of law or otherwise) will have any right or licence in or to any patent, copyright, trade secret right, mask work right, or any other Intellectual Property Right not expressly granted by Adder Technology in the Contract.

8.2 The Customer shall not rebrand the Goods or remove any copyright notices, confidential or proprietary legends or identification from the Goods.

## 9. TERMINATION AND SUSPENSION

9.1 Adder Technology may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for the winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enter into any voluntary arrangement with its creditors, or it ceases or threatens to cease to carry on business.

9.2 Without limiting its other rights or remedies, Adder Technology may suspend provision of the Goods under the Contract or any other contract between the Customer and Adder Technology if the Customer becomes subject to any of the events listed in clause 9.1 or Adder Technology 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.

9.3 On termination of the Contract for any reason the Customer shall immediately pay to Adder Technology all of Adder Technology's outstanding unpaid invoices and interest.

9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 10. LIMITATION OF LIABILITY

10.1 Nothing in this Contract shall limit or exclude Adder Technology's liability for death or personal injury caused by its negligence or for fraud or fraudulent misrepresentation.

10.2 Subject to clause 10.1:

- (i) Adder Technology shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (ii) Adder Technology's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods delivered under the Purchase Order relating to the claim.

## 11. FORCE MAJEURE

11.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## 12. GENERAL

12.1 A waiver of any right under this Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Contract are cumulative and do not exclude rights provided by law.

12.2 If any provision of this Contract (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

12.3 This Contract and any documents referred to in it constitute the whole Contract between the parties and supersede any previous arrangement, understanding or Contract between them relating to the subject matter of this Contract. Each party acknowledges that, in entering into this Contract



and the documents referred to in it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty of any person (whether a party to this Contract or not) other than as expressly set out in this Contract or those documents. Nothing in the Contract shall limit or exclude any liability for fraud.

- 12.4 Save as expressly provided in this Contract, no amendment or variation of this Contract shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 12.5 Neither party may assign, transfer, charge or subcontract its rights or obligations under this Contract without the written consent of the other.
- 12.6 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership, agency or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 12.7 This Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
- 12.8 The Customer grants to Adder Technology a worldwide, royalty-free, non-exclusive licence to use rights in its company logo for the purposes of displaying the Customer's logo on Adder Technology's website and marketing presentations. Adder Technology may list the Customer as a customer on its website and include a hyperlink to the Customer's website. Adder Technology may include the Customer's name in the list of Adder Technology customers at the foot of its press releases. The parties may refer to their collaboration in marketing slides. All other media releases, public announcements and public disclosures by the Customer relating to this Agreement or its subject matter shall be approved in writing by Adder Technology prior to release.
- 12.9 Any notice under this Contract must be in writing and must be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Contract or such other address as may have been notified by that party for such purposes. A notice delivered by hand will be deemed to have been received when delivered (or if delivery is not in normal business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received at the time at which it would have been delivered in the normal course of post. For the purposes of this clause 12.9, "writing" does not include email.
- 12.10 This Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Contract, its subject matter or its formation (including non-contractual disputes or claims).
- 12.11 In these Conditions, the following definitions apply:  
**Adder Technology:** Adder Technology Limited (registered in England and Wales with company number 01823478).  
**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.  
**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

**Contract:** the contract between Adder Technology and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from Adder Technology.

**Delivery Location:** has the meaning set out in clause 4.1.

**Force Majeure Event:** has the meaning given in clause 11.

**Goods:** the goods (or any part of them) as set out in the Purchase Order and comprising the Hardware and Software together.

**Hardware:** means the hardware and electronics set out in the Purchase Order.

**Intellectual Property Rights:** means all copyright, database rights, topography rights, design rights, trade marks, trade names, utility models, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Goods.

**Limited Warranty:** has the meaning set out in clause 5.1.

**Purchase Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of Adder Technology's quotation, or overleaf, as the case may be.

**Software:** means the computer executable binary code in object form that is made available under the software licence at clause 4.4.

**Specification:** any specification for the Goods, including any related plans and drawings, which are provided by Adder Technology.

12.12 In this Contract, the following rules apply:

- (i) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (ii) A reference to a party includes its personal representatives, successors or permitted assigns.
- (iii) Any words following the terms including, 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.
- (iv) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (v) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (vi) A reference to writing or written does include e-mails.

