

Standard Conditions of Purchase for EA Technology Limited

1.1 Unless the context otherwise requires the following expressions shall have the following meanings in these Conditions:-

"Conditions" the standard terms and conditions of purchase of EATL as set out herein and including any additional terms and conditions of purchase agreed in Writing by EATL

"EATL" EA Technology Limited, a company registered in England under number 2566313 whose registered office is at Capenhurst, Chester CH1 6ES

"Acceptance of Delivery" the date of acceptance of delivery of the Goods at EATL's premises (or such other location nominated by EATL in Writing) in proper working order and "delivered" shall be construed accordingly

"Contract" the Order and the Seller's acceptance of the Order

"Goods" the goods, equipment, software and operating manuals specified in the Order to be bought by EATL from the Seller

"Intellectual Property Rights" any patent, copyright, design right, trade mark, confidential information, semi conductor chip topography right or any other similar right whether registered or not and any application for such right

"Losses" has the meaning given to it in clause 13

"Order" a requisition placed by EATL with the Seller in Writing for the supply of Goods and/or Services in accordance with EATL's specification, incorporating these Conditions as amended from time to time

"Price" the sum specified in the Order as the sum payable by EATL under the Contract (which shall be exclusive of value added tax but inclusive of all other charges, including without limitation, shipping, carriage and insurance)

"Seller" the person, firm or company named in the Order

"Services" the work, installation or services or any of them to be provided and where necessary delivered by the Seller pursuant to the Order

"Writing" includes facsimile transmission electronic communication and comparable means of communication and "written" shall be construed accordingly

1.2 Unless the context otherwise requires, references to clauses shall be construed as references to clauses of these Conditions.

1.3 The headings of these Conditions are for convenience only and are not intended to have legal effect.

1.4 Unless the context otherwise requires expressions in the singular shall include the plural and vice versa.

1.5 References in the Contract to the Goods and/or Services shall be interpreted as including references to each and any part of the Goods and/or Services and to any Goods and/or Services repaired or replaced (as the case may be) by the Seller pursuant to the Contract.

1.6 Where this Contract provides for EATL to do any act in Writing, such act shall only be validly done if signed by a duly authorised signatory of EATL.

1.7 Any reference to any statute or any order, regulations or by-law made with statutory authority shall include any amendment thereto or any re-enactment or replacement thereof.

2. Acceptance of Contract

2.1 The Goods and/or Services shall only be supplied to EATL under this Contract.

2.2 Each Order for Goods and/or Services by EATL constitutes an offer on the part of EATL to buy the Goods and/or Services subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling an Order, accepts the Offer, whichever is earlier.

2.3 Subject to any variation under Condition 2.4, these Conditions shall apply to the exclusion of any other terms and conditions which the Seller purports to apply in respect of the supply of the Goods and/or Services.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.5 No modification or amendment to the Contract shall be binding unless agreed by both parties and acknowledged in Writing by an authorised signatory of EATL.

2.6 The Seller agrees that any attempt to incorporate its terms and conditions into any contract between EATL and the Seller shall be a material breach of these conditions.

2.7 The Seller warrants that it is authorised to enter into the Contract and that it is in possession of any permits, consents or licences required to perform the Contract.

2.8 The Seller agrees to comply with all health and safety rules and regulations and any other security requirements that apply at any of EATL's premises.

3 Quality, Packaging and Marketing

3.1 The Seller warrants that the Goods and/or Services shall:-

3.1.1 be of satisfactory quality;

3.1.2 conform in all respects as to quantity, quality and description with the Order;

3.1.3 be of sound materials and workmanship;

3.1.4 conform in all respects to any samples or patterns which have been provided;

3.1.5 meet the standards and specifications specified or referred to in the Order;

3.1.6 be fit for all purposes for which they may reasonably be used and in addition for any purpose expressly specified by EATL;

3.1.7 comply with all relevant laws, governing specifications as to quantity, quality, standards or description, which shall include (where applicable) as a minimum compliance with all relevant standards including, inter alia, the relevant regulations, statutes, codes of practice, best practice of the relevant trade or profession, British Standard, European Standard or International Standard applicable; and

3.1.8 be manufactured and carried out (as appropriate) by properly trained and qualified personnel using all reasonable skill, care and diligence and in a good workmanlike manner.

3.2 Nothing in this Contract shall in any way limit or exclude the application of any terms, conditions or warranties relating to the Goods implied in this Contract by statute or common law.

3.3 The Price of the Goods shall include where appropriate such packaging as is necessary for the immediate containment or handling of the Goods but shall exclude additional cartons, cases and other similar containers used for convenience of distribution.

3.4 The Goods supplied to EATL shall be suitably and sufficiently marked, endorsed and labelled with information and advice necessary to instruct and warn any persons into whose hands the Goods shall come about any hazards to health or safety arising from dispatching, receiving, handling, using or possessing the Goods and about any necessary precautions to be taken. Provided that if it shall not be reasonably practicable to mark, endorse or label the Goods accordingly, the Seller shall fully instruct and advise such persons by an accompanying notice at the time of dispatch.

3.5 Where the provision of the Goods, supply of the Services, or the performance of any of the seller's obligations under the contract involves access to or use of any personal data, the Seller warrants that it shall at all times comply with all applicable data legislation.

4 Inspection and Testing before Delivery

4.1 Before Acceptance of Delivery the Seller shall ensure that the Goods and/or the Services comply with the requirements of the Order and this Contract. The Seller shall give EATL reasonable notice of any tests for the Goods and/or Services it conducts for this purpose and EATL shall be entitled to be present at the tests. The Seller shall supply EATL with certificates for the results of all tests it conducts.

4.2 Notwithstanding Condition 4.1, EATL shall be entitled to require the Seller to inspect and test the Goods during manufacture, processing and/or storage and/or the Services prior to Acceptance of Delivery to demonstrate that the Goods and/or Services will or do comply with the requirements of the Order and this Contract. The Seller shall provide or procure the provision of all facilities as may reasonably be required by EATL to conduct such inspection and tests. Any inspection and tests shall be conducted at the Seller's expense.

4.3 If as a result of any inspection or test under Condition 4.1 or 4.2 EATL is of the opinion that the Goods and/or the Services do not or are unlikely to comply with the requirements of the Order and Contract, EATL shall inform the Seller accordingly in Writing. The Seller at its own expense shall take all necessary steps to ensure compliance and in addition EATL shall have the right to require and witness further testing and inspection.

- 4.4 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and/or Services, any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 4.5 If the Seller is unable to ensure compliance as required under Condition 4.3 and without prejudice to Condition 5.1, EATL may by notice in Writing to the Seller before Acceptance of Delivery reject the Goods and/or the Services and terminate the contract.

5 Rejection after Delivery

- 5.1 Without prejudice to any other right or remedy which EATL may have, EATL may by notice in Writing to the Seller within a reasonable time of Acceptance of Delivery or completion of commissioning, whichever date is the later, reject the Goods and/or the Services if they or any part of them do not comply with the requirements of this Contract. EATL shall specify the reasons for rejection.

6 Consequences of Rejection

- 6.1 On rejection of the Goods and/or the Services under Condition 4.5 or 5.1, EATL may at its sole discretion:
- 6.1.1 require the Seller (at its expense) to replace the rejected Goods and/or the Services within a reasonable time with goods and/or services which comply with the requirements of the Contract; or
 - 6.1.2 accept the Goods and/or the Services notwithstanding their failure to comply with the requirements of the Contract, which, as amended shall continue in full force and effect; or
 - 6.1.3 reduce the Price pro-rata in respect of the rejected Goods and/or the Services, obtain other goods and/or services in lieu of the rejected Goods and/or the Services and recover from the Seller all additional costs and expenses so incurred; or
 - 6.1.4 claim such losses as may have been sustained in consequence of the Seller's breach or breaches of the Contract; or
 - 6.1.5 terminate this Contract with immediate effect by written notice to the Seller and, on service of such notice, EATL shall cease to have any liability under this Contract or otherwise to make any payment and shall be entitled to recover from the Seller all sums paid by or on behalf of EATL for the Goods and/or the Services or otherwise in connection with this Contract.
- 6.2 The Seller shall take redelivery of all rejected Goods and/or the Services at its cost on the basis that a full refund for the Goods and/or Services so returned shall be paid forthwith by the Seller.

7 Delivery and Commissioning

- 7.1 The Goods and/or the Services shall be delivered in accordance with EATL's instructions. EATL may require the Goods and/or the Services to be delivered in instalments.
- 7.2 Commissioning shall be carried out by the Seller as provided in the Order or, in the absence of such provision, as otherwise required in Writing by EATL.
- 7.3 EATL shall issue a certificate to the Seller on completion of commissioning to the satisfaction of EATL and commissioning shall be deemed to have been completed on the date of issue of such certificate.
- 7.4 The date for delivery shall be specified in the Order or, if no such date is specified, shall be 28 days following the date of the order. Time for delivery shall be of the essence.
- 7.5 Unless otherwise stipulated by EATL in the Order, delivery of the Goods and/or Services shall only be accepted by EATL in normal business hours.
- 7.6 If the Goods and/or Services are not delivered on the due date then, without prejudice to any other rights which it may have, EATL reserves the right to:
- 7.6.1 cancel the Contract in whole or in part;
 - 7.6.2 refuse to accept any subsequent delivery of the Goods and/or Services which the Seller attempts to make;
 - 7.6.3 recover from the Seller any expenditure reasonably incurred by EATL in obtaining the Goods and/or Services in substitution from another supplier; and/or
 - 7.6.4 claim damages for any additional costs, loss or expenses incurred by EATL which are in any way attributable to the Seller's failure to deliver the Goods and/or Services on the due date for delivery.
- 7.7. EATL may off-load Goods at its own risk, however, EATL can refuse to off-load the Goods (at the Supplier's expense) if it reasonably suspects that: (i) the Goods are damaged; or (ii) the Goods are likely to be damaged by trying to off-load the Goods; and/or (iii) it would be unsafe to off-load the Goods.

8 Passing of Title and Risk

- 8.1 Title in the Goods or any specific part of the Goods shall pass to EATL on Acceptance of Delivery, unless payment for the Goods and/or Services is made prior to delivery, when it shall pass to EATL upon payment being made by EATL for the Goods.
- 8.2 Notwithstanding Condition 8.1, EATL is entitled to resell the Goods before ownership of the Goods has passed to EATL (for which purpose the Seller hereby authorises EATL to do so as its agent and to retain and apply any proceeds of sale in accordance with these Conditions).
- 8.3 If payment for the Goods is made prior to the date on which the Goods are delivered to EATL, the Seller shall:
- 8.3.1 store such Goods separately from other Goods;
 - 8.3.2 take such care of such Goods including effecting all proper insurance as a careful businessman would take of his own property;
 - 8.3.3 clearly identify such Goods as the property of EATL;
 - 8.3.4 not deal in such Goods except as authorised in Writing by EATL;
 - 8.3.5 not hold itself out as owning such Goods;
 - 8.3.6 not permit any lien to be created over such Goods;
 - 8.3.7 permit EATL, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be (or may have been) designed, manufactured or stored in order to inspect them or to recover them.
- 8.4 Risk in the Goods shall pass to EATL on Acceptance of Delivery or on completion of commissioning. The Seller shall maintain a contract of insurance over the Goods until such time as risk passes to EATL.
- 8.5 On service of notice of rejection after Acceptance of Delivery pursuant to Condition 5.1, and where EATL does not accept the goods pursuant to Condition 6.1, risk in the rejected Goods shall revert to the Seller.

9 Price and Payment

- 9.1 EATL shall pay the Price in the manner specified in the Order or, if not so specified, by the end of the month following the month of Delivery, but time for payment shall not be of the essence of the Contract.
- 9.2 No variation in the Price nor extra charge shall be accepted unless agreed in writing by EATL.
- 9.3 The Seller shall have the right to charge interest on overdue invoices at a rate of 2% per year above the base rate of the National Westminster Bank plc calculated from the date when payment of invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.
- 9.4 All sums which the Seller is liable for whatever reason to pay to EATL may be deducted by EATL from the Price or may be recovered by action at law from the Seller.
- 9.5 The Seller is not entitled to suspend deliveries of the Goods and/or the provision of the Services as a result of any sums being outstanding.

10 Warranty Period

- 10.1 For a period of twelve months after Acceptance of Delivery or completion of commissioning of the Goods, whichever date is later, the Seller warrants that the Goods shall comply with this Contract. The Seller shall be liable for any defects in the Goods or any failure of the Goods to comply with these conditions which becomes apparent during this time period, other than where such defect or such failure to comply occurs by reason of normal wear and tear.
- 10.2 In the event that the Seller fails to comply with Condition 10.1, EATL shall be entitled to avail itself of any of one or more of the following remedies:
- 10.2.1 to require the Seller to remedy any such failure to comply within such period as EATL shall reasonably require;
 - 10.2.2 to require the Seller to repair or replace the Goods; and/or
 - 10.2.3 may return the Goods to the Seller.

11 Third Party Intellectual Property Rights

- 11.1 The Seller shall indemnify and hold harmless EATL against all Losses arising out of any infringement of any third party's Intellectual Property Rights arising out of the supply of the Goods and/or Services by the Seller or any use of or dealing with the Goods and/or Services.
- 11.2 In the event of any claim being made or action brought against EATL for any infringement or alleged infringement referred to in Condition 11.1, EATL shall notify the Seller of such claim. The Seller shall have the conduct of such claim or action. EATL shall afford the Seller all reasonable assistance at the expense of the Seller for the purpose of contesting any such claim or defending any such action. Should the Seller fail to conduct such claim or action, EATL may itself conduct such claim or action and the Seller shall provide all reasonable assistance as EATL may require at the Seller's own expense. The Seller shall indemnify and hold harmless EATL against any and all loss, damages, costs and expenses including any award of damages which may be incurred in contesting such claim or defending such action.
- 11.3 The Seller undertakes that it will not use any intellectual property of EATL other than as expressly authorised by EATL. The Seller shall indemnify and hold harmless EATL in respect of any breach by the Seller of this undertaking.

12 Licence of Intellectual Property Rights

- 12.1 The Seller hereby grants to EATL a full irrevocable, royalty-free exclusive license of all applicable Intellectual Property Rights in order to use and sell the Goods, together with the right to sub-license on corresponding terms to any third party to whom EATL supplies the Goods, whether by sale, hire or otherwise, and the Seller warrants to EATL that it has the full right and authority to grant this license and right.

13 Indemnity

- 13.1 The Seller shall indemnify and hold harmless EATL against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business and like loss), all loss, damages, costs and expenses ("Losses") arising out of any damage to or loss of any property or injury to or the death of any person arising out of (i) the performance of this Contract by the Seller, its employees, agents or sub-contractors; or (ii) any breach of these Conditions by the Seller, its employees, agents or sub-contractors, except to the extent that such Losses are directly caused by the negligence of EATL, its employees, agents or sub-contractors.
- 13.2 EATL's liability howsoever arising shall be limited to the amount of the Price in respect of the relevant Order. EATL shall have no liability to the Seller for loss of profit, loss of revenue, goodwill or opportunity whether or not such losses are reasonably foreseeable. Save for payment of the Price in accordance with Condition 9, EATL shall have no liability to the Seller, its employees, agents or sub-contractors, except for death or personal injury arising from EATL's negligence.
- 13.3 Nothing in these Conditions shall exclude or limit either party's liability for personal injury or death caused by its negligence, fraudulent misrepresentation or any other loss to the extent that the same can not be limited or excluded by law.

14 Termination

- 14.1 EATL may by written notice to the Seller terminate all or part of this Contract immediately if:-
- 14.1.1 the Seller is in breach of any of its obligations under this Contract;
- 14.1.2 in relation to the Seller any application or action is made or taken for the presentation of an administration petition, a voluntary arrangement, a composition or a reconstruction of its debts or the appointment of a receiver, administrative receiver or liquidator or (the Seller being an individual) a petition is presented for a bankruptcy order or an application is made for a voluntary arrangement or (whether an individual or not) the Seller is unable to pay its debts within the meaning of the Insolvency Act 1986;
- 14.1.3 the Seller ceases or threatens to cease to carry on in business; or
- 14.1.4 the financial position of the Seller deteriorates to such an extent that in the opinion of EATL the capability of the Seller to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.2 Insofar as a breach by the Seller of Condition 14.1 is capable of being remedied, EATL shall not be entitled to terminate under Condition 14.1.1 unless it has given the Seller at least 7 days' written notice to remedy the breach.
- 14.3 EATL may in the case of termination under Condition 14.1.2 give a receiver, administrative receiver, administrator or liquidator the option of carrying out this Contract (without any variation in its terms) subject to EATL receiving a guarantee in terms acceptable to EATL for its due and faithful performance.
- 14.4 Termination by EATL shall be without prejudice to any rights which may have accrued to it prior to termination.
- 14.5 Failure by EATL at any time to enforce any provision of this Contract shall not be construed as a waiver of any provision of this Contract or of EATL's right subsequently to enforce the same or any other provision of this Contract.
- 14.6 If the cost to EATL of obtaining goods in replacement of the Goods or services in replacement of the Services not delivered in accordance with this Contract as at the date of termination exceeds the Price, the Seller shall pay to EATL the amount of such excess in accordance with the payment terms set out in this contract.

15 Assignment

- 15.1 The Seller shall not without EATL's consent in Writing assign, transfer or sub-contract this Contract or any part of it to any other person.
- 15.2 EATL may assign the Contract or any part of it to any person, firm or company.
- 15.3 The Seller shall procure compliance by its sub-contractors with all obligations accepted by the Seller under this Contract on corresponding terms.
- 15.4 The Seller shall be liable for all acts and omissions of any of its sub-contractors as though they were its own.
- 15.5 The Seller shall indemnify and hold harmless EATL against all Losses arising out of any act or omission of any of its sub-contractors for which the Seller is liable under Condition 15.4.

16 Insurance

- 16.1 The Seller shall have in force and shall require that any sub-contractor shall have in force for so long as the Seller supplies the Goods and/or Services to EATL and for a period of 6 years thereafter:
- 16.1.1 employer's liability insurance in accordance with any legal requirements for the time being in force; and
- 16.1.2 public liability insurance, professional indemnity and product liability insurance covering as a minimum all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5,000,000 of any one incident and unlimited in total;
- 16.2 The policy or policies of insurance referred to in this Condition 16 shall be purchased from a reputable UK insurer, shall be on an occurrence basis and shall be shown to EATL on request together with satisfactory evidence of payment of the premium(s).

17 Confidentiality

- 17.1 All information given by EATL to, or received by, the Seller or its agents in connection with this Contract shall be treated by the Seller as confidential and the Seller shall not disclose any such information save to such of its employees or agents or sub-contractors who need to know such information for the purpose of this Contract and provided that such person undertakes to the Seller to keep such information confidential. The Seller shall not use such information for any purpose other than this Contract.
- 17.2 The Seller shall obey any directions of EATL and follow any procedures laid down by EATL for protecting confidential information.
- 17.3 Without prejudice to the generality of Conditions 17.1 and 17.2, the Seller:
- 17.3.1 shall obtain written permission from EATL before publishing any literature, delivering any lecture or making any communication with the press relating to the Goods and/or Services; and
- 17.3.2 shall not without EATL's written permission make or remove from EATL's premises any photographs, drawings, documents or prints relating to the Goods and/or Services.
- 17.4 Materials, equipment, tools, copyrights, design rights or any other forms of Intellectual Property Rights in all drawings, specifications and data supplied by EATL to the Seller or not so supplied but used by the Seller specifically in the maintenance of the Goods and/or the supply of the Services shall at all times be and remain the exclusive property of EATL but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to EATL and shall not be disposed of other than in accordance with EATL's written instructions, nor shall such items be used otherwise than as authorised by EATL in Writing.

18 Notices

- 18.1 Any notice or other document to be served under this Contract shall be in Writing and service may be effected (and in such case shall be deemed to have been made) as follows:-

18.1.1 by pre-paid express post – on the fourth day after posting in the case of express air mail post and on the second day after posting in other cases; or

18.1.2 by personal delivery – upon actual delivery.

18.2 Any notice or other document to be served under this Contract shall be addressed to a party at the address first before written or such other address as either party may serve notice of to the other party (or alternatively, in the case of a company, to the registered office of that company).

19 Third Party Rights

19.1 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

20 Construction of Contract

20.1 This Contract shall be construed in accordance with and governed by English law and the parties hereto hereby submit to the non-exclusive jurisdiction of the English Courts.

20.2 EATL's rights under this Contract are in addition to and not in lieu of any other rights it may have at law, in equity or by statute.

May 2018