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## Terms and Conditions of Sale

### 1. Orders for Goods, Software and Services

- 1.1. We supply our customers with a range of hardware and software products and related services. Some goods have both hardware and software elements. In these terms of business references to “goods” means the hardware component of goods, “software” means software products (PC-based Windows applications) and the software element of goods (embedded source or object firmware) and “services” means any of our services provided on an annual basis or otherwise. Any additional terms relating to our services will be set out in our quotation document. The details of our specific supply to you are set out in our order documents. Orders for multi-drop contracts are accepted in accordance with these terms, the schedule, the order documents and our policy on multi-drop contracts, which we will provide to you prior to acceptance of your order. The terms of our policy on multi-drop contracts will take precedence over these terms to the extent of any conflict. Any terms set out in the order documents specific to your order will take precedence over the policy on multi-drop contracts, and over these terms, to the extent of any conflict.
- 1.2. All orders are placed under these terms of business (as supplemented in accordance with paragraph 1.1 above) which exclude any other terms of business that you seek to impose even though they may be submitted in a later document and/or purport to exclude our terms of business.
- 1.3. No contract comes into existence until we have accepted your order.
- 1.4. Our sales representatives are not authorised to vary the terms of any contract or quotation document, nor to make any representations on our behalf.
- 1.5. No amendment to these terms of business or any other terms may be made unless expressly accepted by us in writing.
- 1.6. Cancellation is not permitted except where expressly agreed in writing by one of our directors. If we agree to cancel you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation.

### 2. Price

- 2.1. Where no price has been quoted (or a quoted price is no longer valid) the price is as listed in our published price list current at the date of acceptance of the order.
- 2.2. Unless otherwise stated all prices are EX WORKS our premises exclusive of VAT.
- 2.3. We reserve the right, by giving you notice, at any time prior to delivery to adjust the price of the goods, software or services to take account of any increase in our costs owing to factors beyond our control, including (but not limited to) variations in currency exchange rates.

### 3. Payment

- 3.1. Unless agreed otherwise, payment is due with your order. If credit facilities are granted, then payment must be received in full within 30 days of delivery.
- 3.2. All bank charges need to be paid at source. There will be no delivery until the full amount according to the invoice is received in full.

- 3.3. Time for payment is of the essence. If you fail to pay any sums owing to us by the due date, we may charge you a compensatory fixed sum and statutory interest on the sum due in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 as amended by The Late Payment of Commercial debts Regulations 2002. Interest shall be calculated on a monthly basis.
- 3.4. As soon as payment becomes due we reserve the right to instruct our solicitors to recover the sums due. If we do instruct our solicitors, you shall on demand and on a full indemnity basis, pay to us all costs and expenses (including, but not limited to, court costs, solicitors' fees and disbursements and all other out of pocket expenses and any VAT on such costs and expenses) which we incur in connection with any action or court proceedings (including enforcement proceedings) taken by our solicitors to recover the sums due.
- 3.5. We reserve the right at any time at our discretion to demand security for payment before continuing with or delivering an order or supplying services.
- 3.6. You do not have the right to set-off counterclaims against the price of the goods, software or services.
- 3.7. As soon as payment of any invoice is overdue, we reserve the right not to deliver any goods and cease the supply of all support and services until all overdue invoices are paid in full.

#### **4. Delivery**

- 4.1. Unless agreed otherwise, delivery will be made EX WORKS our premises.
- 4.2. We shall deliver software in object code form on the designated storage media.
- 4.3. Time of delivery is not of the essence. Any date mentioned is given only as a guide and we are not liable for any loss whatsoever arising from our failure to deliver on the stated date.
- 4.4. Unless otherwise stated on our quotation, on delivery you shall be responsible for installing the software on your computer system.

#### **5. Risk**

- 5.1. Risk in goods passes to you on delivery. Risk in the media upon which the software is recorded passes to you on delivery.

#### **6. Title**

- 6.1. Subject to clause 6.3, ownership of the goods does not pass to you until payment due under all your contracts with us is made in full.
- 6.2. Until ownership of the goods passes to you:
  - 6.2.1. you hold the goods as fiduciary agent and bailee for us;
  - 6.2.2. the goods must be stored and marked in such a way as to be clearly identifiable as belonging to us and their date of delivery;
  - 6.2.3. you shall keep a record of the numbers of all serial numbered goods; and
  - 6.2.4. the goods must be kept in good repair and insured for an amount equal to the contract price.
  - 6.2.5. Ownership of the software and the media upon which the software is recorded does not pass to you.

## 7. Inspection

- 7.1. We shall not be liable for any shortage or damage to the goods on delivery unless you comply with all of the following conditions:
  - 7.1.1. you must whenever possible inspect the goods on delivery;
  - 7.1.2. where the goods cannot be inspected on delivery then the delivery note must be marked "not inspected";
  - 7.1.3. you must give us written notice of the alleged defect, shortage in quantity, damage or failure to comply with its description or sample within seven days of delivery;
  - 7.1.4. you must give us a reasonable opportunity to inspect the goods before you use, alter or modify them.
  - 7.1.5. you shall accept the software immediately after you break the seal of "shrink-wrapped" software or otherwise when software is successfully installed on your computer system.
  - 7.1.6. If you fail to accept the software within seven days following delivery you shall be deemed to have accepted it.

## 8. Software Licences

- 8.1. You undertake to us to comply with the terms of any relevant software licences.
- 8.2. You agree not to copy or pass any of our software to another party and to use the software with our hardware products as intended.
- 8.3. No software licence shall come into force until we have received all your outstanding payments for goods and software.

## 9. Intellectual Property Rights

- 9.1. All copyright and other intellectual property rights in the software, firmware and hardware goods supplied by Eccel Technology Limited are and shall remain the property of Eccel Technology Limited (hereafter referred to as "the product" or "the products")
- 9.2. You shall notify us immediately if you become aware of any unauthorised use of the products.
- 9.3. You shall permit us to check the use of the products at all reasonable times, and for this purpose you hereby irrevocably licence us, our employees and agents to enter any of your premises.

## 10. Warranties

- 10.1. We have title to the products and the right to sell them.
- 10.2. If on delivery, the products are found to be in a condition or form that but for this condition would have entitled you to terminate the contract or claim damages, we reserve the right to repair or at our option replace the goods under RMA.
- 10.3. Subject to clause 10.7, we shall repair or at our option replace products found to be defective because of faulty design, manufacture, materials or workmanship, during the period of 12 months from delivery; thereafter, subject to any agreed extended warranty terms, repair services are available at our standard costs.
- 10.4. These warranties for the products do not extend to defects or damage caused by improper or abnormal use, improper maintenance, unauthorised repair or modification of the products.

- 10.5. We have the right, power and authority to supply the products.
- 10.6. We do not warrant that:
  - 10.6.1. the use of the products will meet your requirements; or
  - 10.6.2. the operation of the products will be uninterrupted or error free; or that
  - 10.6.3. functions of the products will operate in the combinations which you select to use. Where we are not the manufacturer of the products, and in the case of defects or bugs in the software, you shall not be entitled to receive any greater benefit under this contract than shall be received by us under any guarantee or warranty given to us by our suppliers.
- 10.7. These warranties for the products shall not apply if the products have been subjected to damage or abuse; or have been altered or changed in any way without our consent.
- 10.8. To claim the benefit of the product warranty you must inform us of a relevant defect within thirty working days of discovering it and return the product to us at your expense, complying with our Returns procedure (11. Returns)
- 10.9. We shall perform any services with reasonable skill and care.
- 10.10. In return for the benefit of these warranties, you agree that all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.11. Each of the sub-clauses in this clause is to be treated as separate and independent.

## 11. Returns

- 11.1. Prior to returning any Goods to the Company for any reason, the Customer must contact the Company to obtain a returns authorisation number ('RMA') by email to [sales@eccel.co.uk](mailto:sales@eccel.co.uk). All Goods are returned at the Customer's risk and expense and should be undamaged by the Customer and in their original packaging. The Customer is responsible for returning Goods to the Company and for providing proof of delivery of such return.

The Company operates a 30 day return policy. To be accepted for return on this basis, Goods should be returned for receipt by the Company within 30 days of despatch.

The Customer should return the Goods to "**Eccel Technology Ltd, Unit 16B Fir Tree Lane, Groby, Leicestershire, LE6 0FH (UK).**" clearly quoting the Returns Material Authorisation Number (RMA), Customer's account number and order number on the outside of the package.

Any Goods returned after 30 days as 'unwanted' or 'incorrectly ordered' may be accepted at the discretion of the Company but may be subject to a minimum restocking fee of 20% of the invoice value of the Goods or £10, whichever is the greater. Any Goods which are not in catalogue or are non-stock items may not be returned. Any static-sensitive Goods supplied in sealed packaging may not be returned if the blister or 'peel' packs in which they are supplied have been opened, tampered with or damaged.

## 12. Data Handling and Protection Policy (GDPR EU regulations May 2018)

Please see our separate Privacy Policy covering this.

### **13. Liability**

- 13.1. We are not liable to you (whether in contract, tort (including but not limited to negligence) or otherwise) for any loss of profit, production, data, goodwill or business opportunities or anticipated savings or benefits or for any type of indirect, special or consequential loss, even if that loss was reasonably foreseeable or was reasonably in our contemplation at the time of contracting.
- 13.2. Our total liability for any one claim or for the total of all claims arising from any one act or default (whether arising from our negligence or otherwise) shall not exceed the contract price or in the case of an annual service contract the annual contract price.
- 13.3. We shall not be liable to you for any loss arising out of your failure to keep full and up-to-date security copies of your computer programs and data.
- 13.4. Nothing in this clause is deemed to exclude or restrict our liability to you for death or personal injury resulting from our negligence.

### **14. Force Majeure**

We shall not be liable to you for any failure or delay in the performance of our obligations caused by circumstances beyond our control which would include act of God, war, riot, sabotage, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, government action or regulations, delay by suppliers, accidents, and shortage of materials, or labour.

### **15. Severance**

If any provision in this Agreement is held by any court or other competent authority to be illegal, void or unenforceable, then such provision shall be deemed to be severed, but the validity, legality and enforceability of the remaining provisions shall not be affected.

### **16. Applicable Law**

English law applies to this Agreement and any dispute arising in connection with it is subject to the non-exclusive jurisdiction of the English courts.