

Terms and Conditions for the Supply of Products

The Customer's attention is drawn in particular to the provisions of Clause 14.

1. DEFINITIONS AND 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 set out in this document.
Contract:	the contract between Eccel and the Customer for the supply by Eccel and purchase by the Customer of the Products, in accordance with these Conditions.
Custom Products:	bespoke products developed for the Customer by Eccel, in accordance with the Supplemental Terms and as more particularly set out on the Front Sheet.
Customer:	the person(s), firm or company who purchases the Products from Eccel.
Eccel:	Eccel Technology Limited (registered in England and Wales with company number 05614911) and its registered office at 198 Station Road Station Road, Glenfield, Leicester, England, LE3 8GT.
Force Majeure Event:	an event, circumstance or cause beyond Eccel's reasonable control.
Front Sheet:	the front sheet setting out the specific details of an Order for Custom Products.
Intellectual Property Rights:	any and all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Losses:	losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis).
Order:	the Customer's order for Products, as set out in the Customer's purchase order form or the Customer's written acceptance of Eccel's quotation, as the case may be.

- Products:** the products agreed in the Contract to be supplied by Eccel to the Customer which may be either Standard Products, Custom Products, or both.
- Software:** software products and the software element of any Products, being embedded source or object firmware within Standard Products or developed bespoke with Custom Products.
- Specification:** the specification for Custom Products, agreed in writing by the Customer and Eccel in accordance with the Supplemental Terms, as more particularly set out on the Front Sheet.
- Standard Products:** Eccel's standard range of products available to purchase from time to time.
- Supplemental Terms:** Eccel's supplemental terms which contain certain additional requirements to address specific services, goods or local market requirements, as issued by Eccel from time to time and available from Eccel on request.
- Warranty Period:** has the meaning given in Clause 11.2.

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 legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.
- (f) Any Supplemental Terms identified in these Conditions shall hereby be incorporated by reference.

2. BASIS OF CONTRACT

2.1 Eccel shall supply Products to the Customer upon the terms of the Contract.

2.2 All Orders for:

- (a) Standard Products are placed under these Conditions, which shall apply to the Contract; and
- (b) Custom Products are placed under these Conditions, the Supplemental Terms for Custom Products and the Front Sheet (which shall be incorporated into the Order by reference), each of which shall apply to the Contract,

and each of which shall exclude any other terms of business that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing, even though they

may be submitted in a later document and/or purport to exclude Eccel's terms of business. The Customer irrevocably 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.

- 2.3 The Order constitutes an offer by the Customer to purchase the Products upon the terms of the Contract. The Customer is responsible for ensuring that the terms of the Order is complete and accurate.
- 2.4 The Contract shall only come into existence once Eccel has accepted an Order, such acceptance only occurring when Eccel has:
- (a) in the case of Standard Products, issued a written acceptance of that Order to the Customer; or
 - (b) in the case of Custom Products, signed the Front Sheet.
- 2.5 Any samples (*produced in accordance with the Supplemental Terms*), drawings, descriptive matter or advertising produced by Eccel and any descriptions or illustrations contained on Eccel's website are produced for the sole purpose of giving an approximate idea of the Products thereon. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for Products given by Eccel shall not constitute an offer. Unless otherwise agreed in writing by Eccel, a quotation shall only be valid for a period of twenty (20) Business Days from its date of issue.
- 2.7 Cancellation is not permitted except where expressly agreed in writing by one of Eccel's directors. If Eccel agrees to terminate a Contract the Customer shall on demand fully indemnify Eccel and keep Eccel indemnified in full against all Losses incurred by Eccel as a result of the termination.

3. PRODUCTS

Standard Products shall be as described in the relevant datasheet and Custom Products shall be as described in the Specification.

4. PRICE

- 4.1 The price of the Products shall be, subject to Clause 4.3:
- (a) in the case of Standard Products, the price set out in the Order; and
 - (b) in the case of Custom Products, the price set out on the Front Sheet,
- or, where no price has been quoted (or a quoted price is no longer valid), the price shall be as stated on Eccel's website as at the date of delivery.
- 4.2 Unless otherwise stated or agreed by Eccel from time to time, the price of the Products excludes:
- (a) amounts in respect of Value Added Tax ("**VAT**"), which the Customer shall additionally be liable to pay to Eccel at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Customer in addition to the price.

- 4.3 Eccel reserves the right, by giving notice to the Customer at any time prior to delivery, to increase the price of the Products or Software to reflect any increase in the cost of the Products that is due to:
- (a) any increase in Eccel's costs owing to factors beyond its control (including variations in currency exchange rates, 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 the Products, or the Specification;
 - (c) in respect of Standard Products only, any modification requested by the Customer and agreed in writing by Eccel; or
 - (d) any delay caused by any instructions of the Customer or failure of the Customer to give Eccel adequate or accurate information or instructions.

5. PAYMENT

- 5.1 Unless otherwise in writing by Eccel, payment in full shall be due:
- (a) in respect of Standard Products, with the Order or, if credit facilities are granted, then payment must be received in full within thirty (30) days of completion of delivery; and
 - (b) in respect of Custom products, in accordance with the payment terms set out on the Front Sheet.
- 5.2 There will be no delivery until the full amount according to the invoice is received in full.
- 5.3 Time for payment shall be of the essence. If the Customer fails to pay any sums owing to Eccel by the due date, Eccel may, without limiting the rights or remedies available to Eccel under these Conditions, charge the Customer interest 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.
- 5.4 As soon as payment becomes due Eccel reserves the right to seek to recover the sums due. If Eccel does exercise such rights, the Customer shall on demand and on a full indemnity basis, pay to Eccel all costs (and expenses) which Eccel incurs in connection with any action or court proceedings (including enforcement proceedings) taken to recover the sums due.
- 5.5 Eccel reserves the right at any time at its discretion to demand security for payment before continuing with or delivering the Order.
- 5.6 As soon as payment of any invoice is overdue, Eccel reserves the right not to deliver the Products or any other products which are part of the same Order or any other Order until all overdue invoices are paid in full.
- 5.7 All amounts due to Eccel under the Contract shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. DELIVERY

- 6.1 Eccel shall ensure that each delivery of Products is accompanied by a delivery note that shows the date of the Order, the date of despatch of the Order (or, if the Products are delivered by instalments, the date of the despatch of the relevant instalment), the type and quantity of the Products (including the code number of the Products, where applicable) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered.
- 6.2 Unless agreed otherwise by Eccel, delivery shall be:
- (a) in the case of Standard Products, Ex Works from Eccel's premises to the location set out in the Order or such other location as the parties may agree in writing from time to time; or
 - (b) in the case of Custom products, made in accordance with the delivery term, and to the delivery location, stated on the Front Sheet,
- at any time after Eccel notifies the Customer that the Products are ready for delivery.
- 6.3 Time of delivery shall not be of the essence and any dates quoted for delivery are approximate only. Eccel shall not be liable for any delay or failure in the delivery of the Products that is caused by a Force Majeure Event or the Customer's delay or failure to provide Eccel with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 6.4 If Eccel fails to deliver the Products, its liability shall be limited to replacing within a reasonable time, or issuing a credit note against any invoice raised for, any such Products that were not delivered. Eccel shall have no liability for any delay or failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's delay or failure to provide Eccel with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 6.5 The quantity of any consignment of Products as recorded by Eccel upon despatch shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 6.6 If the Customer fails to take delivery of the Products within five (5) Business Days of Eccel notifying the Customer that the Products are ready, then:
- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the fifth (5th) Business Day after the day on which Eccel notified the customer of despatch of the Products; and
 - (b) Eccel shall store the Products until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 6.7 If ten (10) Business Days after the day on which Eccel notified the Customer that the Products were ready for delivery the Customer has not taken actual delivery of them, Eccel may, in the case of Standard Products, resell or otherwise dispose of part or all of the Standard Products and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Products.
- 6.8 Notwithstanding the provisions of Clause 6.7, in the case of Custom Products only, if one (1) month after the date on which Eccel notified the Customer that the Products were ready for delivery the Customer has not taken actual delivery of them, the Customer shall be required to pay the price for the Custom Products in full.

6.9 Eccel may deliver the Products by instalments (i.e. multi-drop orders), 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 RISK

Unless otherwise agreed in writing by Eccel, the Products shall be delivered, and the risk of loss of or damage to the Products shall pass to the Customer, in accordance with the relevant delivery term set out in Clause 6.2.

8 OWNERSHIP

8.1 Subject to Clause 9.1, ownership of the Products shall not pass to the Customer until the earlier of:

- (a) Eccel receiving payment in full (in cash or cleared funds) for the Products and any other products that Eccel has supplied to the Customer in which case ownership to the Products shall pass at the time of payment; and
- (b) the Customer resells the Products, in which case ownership to the Products shall pass to the Customer at the time specified in Clause 8.3.

8.2 Until ownership of the Products has passed to the Customer, the Customer shall:

- (a) hold the Products as fiduciary agent and bailee for Eccel;
- (b) store and mark the Products in such a way as to be clearly identifiable as belonging to Eccel;
- (c) keep a record of the numbers of all serial numbered Products;
- (d) keep the Products in good repair and insured against all risks for an amount equal to their full price from the date of delivery; and
- (e) give Eccel such information as Eccel may reasonably require from time to time relating to:
 - i) the Products; and
 - ii) the ongoing financial position of the Customer.

8.3 Subject to Clause 8.4, the Customer may resell or use the products in the ordinary course of its business (but not otherwise) before Eccel receives payment for the Products. However, if the Customer resells the Products before that time:

- (a) it does so as principal and not as Eccel's agent; and
- (b) ownership of the Products shall pass from Eccel to the Customer immediately before the time at which resale by the Customer occurs.

8.4 At any time before ownership of the Products passes to the Customer, Eccel may:

- (a) by notice in writing, terminate the Customer's right under Clause 8.3 to resell the Products or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

9 SOFTWARE

9.1 Ownership of the Software and the media upon which the Software is recorded does not pass to the Customer.

9.2 Where the Products contain or constitute Software:

- (a) the Customer shall accept any Software immediately upon delivery by Eccel, or otherwise when any Software is successfully installed on the Customer's computer system. If the Customer fails to accept any Software within one (1) Business Day following delivery the Customer shall be deemed to have accepted it;
- (b) the Customer undertakes to Eccel that it shall comply with the terms of any relevant Software licences including, where relevant, those set out in the Supplemental Terms; and
- (c) the Customer agrees not to copy or pass any of the Software to another party and to use the Software with the Products only and, where relevant, in accordance with the Supplemental Terms

9.3 No Software licence shall come into force until Eccel has received all outstanding payments for Products and/or Software, as the case may be, from the Customer in accordance with the Contract.

9.4 Eccel shall deliver any Software in object code form.

9.5 Unless otherwise stated on Eccel's quotation, on delivery the Customer shall be responsible for installing any Software on the Customer's computer system.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 All copyright and other Intellectual Property Rights in the Products and/or Software an (*as the case may be*) supplied by Eccel are and shall remain the property of Eccel.

10.2 The Customer shall notify Eccel immediately if it becomes aware of any unauthorised use of the Products and/or Software (*as the case may be*).

10.3 The Customer shall permit Eccel to check the use of the Products and/or Software (*as the case may be*) at all reasonable times, and for this purpose the Customer hereby irrevocably licence Eccel, its employees and agents to enter any of the Customer's premises.

11 WARRANTIES

11.1 Eccel has full title to the Products and the right to sell them.

11.2 Eccel warrants that on delivery (or, in the case of delivery in instalments, on each delivery within the applicable Order), and for a period of ninety (90) days from the date of such delivery (the “**Warranty Period**”), the Products shall:

- (a) in the case of Standard Products only, conform in all material respects with the relevant data sheet, user manual or product specification sheet (as the case may be);
- (b) in respect of Customer Products only, conform in all material respects with the Specification; and
- (c) be free from material defects in design, material and workmanship.

11.3 Subject to Clause 11.5, if:

- (a) the Customer gives immediate notice in writing to Eccel at any time during the Warranty Period upon discovery that some or all of the Products do not comply with the warranty set out in Clause 11.2;
- (b) Eccel is given a reasonable opportunity to examine such Products after receiving the notice under Clause 11.3(a); and
- (c) the Customer (if asked to do so by Eccel) returns such Products to Eccel's place of business, within one (1) week of discovery that some or all of the Products do not comply with the warranty set out in Clause 11.2, at the Customer's expense,

Eccel shall, at its sole option, repair or replace the defective Products, or refund to the Customer in full an amount equal to the price paid by Customer for the defective Products (or a pro-rated amount if not all the Goods are defective). Where applicable, repair services shall be available at Eccel's then current standard costs.

11.4 Eccel does not warrant that:

- (a) the use of the Products will meet the Customer's requirements, or be fit for any particular purpose, whether or not known by or communicated to Eccel;
- (b) the operation of the Products will be uninterrupted or error free; or that
- (c) the Products will operate in the combinations which the Customer selects to use them.

11.5 Eccel shall not be liable for the Products' failure to comply with the warranty set out in Clause 11.2, if:

- (a) the Customer makes any further use of such Products after giving notice in accordance with Clause 11.3;
- (b) the defect(s) arises because the Customer failed to follow Eccel's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- (c) the defect(s) arises because the Customer failed to use the Products in accordance with the relevant product data sheet, user manual or product specification sheet (as the case may be) or, in the case of Custom products only, the Specification;

- (d) the customer's operational environment has not been fully disclosed to Eccel;
- (e) the Customer has signed-off that it has fully evaluated the use of the Products within its environment;
- (f) the Customer has been advised against the use of the Products by Eccel;
- (g) the defect arises as a result of Eccel following any drawing, design or specification supplied by the Customer;
- (h) the Customer alters, repairs or modifies the Products without the written consent of Eccel;
- (i) the defect arises as a result of improper or abnormal use, improper maintenance, unauthorised repair or modification of the Products, wilful damage, negligence, or abnormal storage or working conditions;
- (j) the defect arises as a result of fair wear and tear; or
- (k) Standard Products differ from their description on Eccel's website, or Custom Products differ from the Specification, as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

11.6 Except as provided in this Clause 11, Eccel shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in Clause 11.2.

11.7 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 Eccel's consent.

11.8 To claim the benefit of the product warranty the Customer must inform Eccel during the Warranty Period in writing immediately upon discovery, of a relevant defect, and return the product to Eccel at the Customer's expense, complying with Eccel's returns procedure as more particularly set out in Clause 12.

11.9 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.

11.10 These Conditions shall apply to any repaired or replacement Products supplied by Eccel.

12 RETURNS

Prior to returning any Products to Eccel in accordance with the Contract, the Customer must contact Eccel to obtain a returns authorisation number ("RMA") by email to sales@eccel.co.uk or such other email address as may be notified to the Customer by Eccel from time to time. All Products are returned at the Customer's own risk and expense and should be undamaged by the Customer and in their original packaging. The Customer is responsible for returning Products to Eccel and for providing proof of delivery of such return.

The Customer should return Products applicable for a return to:

**ECCEL TECHNOLOGY LTD
UNIT 16B FIR TREE LANE
GROBY
LEICESTERSHIRE
LE6 0FH
UNITED KINGDOM**

clearly quoting the RMA and the Customer's account number (where applicable) on the outside of the package.

13 DATA HANDLING AND PROTECTION POLICY

Please see Eccel's separate Privacy Policy covering this.

14 LIMITATION OF LIABILITY

14.1 The restrictions of liability in this Clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.2 Nothing in the Contract shall limit or exclude the liability or remedy of either party:

- (a) for death or personal injury caused by its negligence;
- (b) for fraud or fraudulent misrepresentation;
- (c) for any breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) for any act, omission or matter, liability for which may not be legally excluded or limited.

14.3 Subject to Clause 14.2:

- (a) Eccel's total liability to the Customer under or in respect of the Contract for any claim or claims, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation, or otherwise howsoever shall in no circumstances exceed the total value of the Products under the relevant Order; and
- (b) Eccel shall not have any liability to the Customer, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation, or otherwise howsoever, for any loss of profit, loss of business, depletion of goodwill or any indirect or consequential loss whatsoever arising out of or in connection with the Contract.

14.4 Eccel shall not be liable to the Customer for any loss arising out of the Customer's failure to keep full and up to-date security copies of the Customer's computer programs and data.

14.5 This Clause 14 shall survive termination of the Contract.

15 FORCE MAJEURE

Eccel shall not be liable to the Customer for any failure or delay in the performance of Eccel's obligations if such delay or failure results in whole or in part from a Force Majeure Event. The time for performance of such obligations shall be extended for a period of time equivalent to the duration of the Force Majeure Event.

16 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.

17 THIRD PARTY RIGHTS

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.

18 ENTIRE AGREEMENT

18.1 The Contract constitutes the entire agreement between Eccel and the Customer.

18.2 Eccel and the Customer acknowledge that in entering into the Contract neither has relied on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Eccel and the Customer agrees that neither shall have any claim for innocent or negligent misrepresentation based on any statement in the Contract.

19 APPLICABLE LAW AND JURISDICTION

The laws of England and Wales shall apply to 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. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.