

METASPHERE PRODUCT SUPPLY CONDITIONS AND LICENCE

These terms and conditions shall apply to any contract (“the Contract”) between Metasphere Ltd (“the Supplier”) and any person, entity or company (“the Purchaser”) placing an order with the Supplier for the manufacture and/or the supply of equipment, machinery or other non-consumable components (“the Non-Consumables”) and/or batteries and other consumable items (“the Consumables”) (collectively “the Equipment”) and/or programs, media and user documentation (“the Software”) (the Equipment and Software being collectively referred to as “the Supply”). The Software may include firmware permanently resident on the Equipment (“Resident Software”).

1. Orders

Orders made to the Supplier shall be made in writing. They will only be effective when accepted in writing by the Supplier issuing an order acknowledgement form (“Order Acknowledgement”). An accepted order may only be cancelled or varied with the Supplier’s prior written consent.

Where the Supply has a custom application, an application specification may be required in which case the Supplier shall inform the Purchaser and the application specification will be developed by the Supplier in consultation with the Purchaser and agreed in writing as part of the Supply.

2. Prices

- a) Prices for the Supply do not include:
 - (i) Value Added or other sales tax, or customs duty;
 - (ii) packaging, delivery or installation;
 - (iii) training in the use, installation and maintenance of the Supply unless otherwise specified in the Order Acknowledgement.
- b) A minimum order value of £250 (excluding items listed in clause 2a) shall apply to each purchase order of the Purchaser.
- c) Prices for the Supply shall be the prices set out either in the Order Acknowledgement or Supplier's price lists as published.

3. Delivery

- a) Within the United Kingdom. The Supplier will deliver the Supply to any address specified by the Purchaser in the United Kingdom.
- b) Outside the United Kingdom. The Supplier will deliver the Supply FCA in accordance with INCOTERMS 2000 to the nearest convenient port or airport to the Supplier’s or its supplier’s premises. At the Purchaser’s request and cost (and subject to clause 4 below), the Supplier will act as the Purchaser’s agent and arrange:
 - i) to ship the Supply to the destination outside the United Kingdom specified by the Purchaser; and
 - ii) such insurance as the Supplier and the Purchaser shall agree.The Purchaser shall be responsible for any freight charges, duties taxes or levies incurred in the execution of the Purchaser’s request under this sub-clause.
- c) Time of delivery. The Supplier shall use all reasonable efforts to deliver the Supply in accordance with times specified but shall not be liable for any loss or damage (whether direct or indirect) arising from late delivery.

4. Export Control

Where the Supply is for delivery or use outside the United Kingdom, the Purchaser shall at its own expense (but with reasonable assistance from the Supplier obtain all necessary export and import licences and authorisations.

5. Risk and Title in Respect of Equipment

- a) Title to the Equipment will pass to the Purchaser on payment in full and in cleared funds of all sums payable to the Supplier in respect of the Supply. Until title passes to the Purchaser, it shall take all necessary precautions to protect and insure the Equipment against any damage or loss.
- b) Risk of loss, damage or destruction of each item of the Equipment will pass to the Purchaser on its delivery to the address, port or airport in accordance with clause 3.

6. Licence of Software

- a) The Purchaser shall after payment for the Supply have a non-exclusive, non-transferable licence to use the Software for its own internal business purposes. The Purchaser shall only use the Resident Software on the Equipment.
- b) The Purchaser shall not copy or reproduce the Software in whole or in part except to make a back-up copy of the Software (excluding any Resident Software) which copy shall be held on the terms and

conditions of this licence. Neither shall the Purchaser modify, decompile or reverse engineer the Software except to the minimum extent permitted by law, nor sub-licence the Software.

- c) All intellectual property rights in the Software remain at all times vested in the Supplier or any licensor of the Supplier absolutely. The Purchaser shall at all times hold or use the Software and all information and know-how relating thereto in confidence, and, save as expressly permitted herein, not use any concept contained therein for its own or any third party's benefit. The foregoing shall not however apply to information which has become public knowledge otherwise than through the fault of the Purchaser its servants or agents or information legally acquired from any third party.

7. Loss or Damage in Transit

- a) Inspection. The Purchaser shall examine the Supply on its delivery for any obvious damage or shortage.
- b) Damage and Short Delivery. Any claim that the Supply is damaged or short delivered must be communicated in writing to both the Supplier and the carrier within three days of delivery; any other claim that the Supply is not in conformity with the despatch note must be communicated in writing to the Supplier within seven days of delivery.
- c) Non-delivery shall be reported in writing to both the Supplier and the carrier:
- i) where the Supply is for eventual delivery within the United Kingdom, within 14 days of the date of advice of despatch note; and
 - ii) where the Supply is for eventual delivery outside the United Kingdom, within 14 days of the date of advice of despatch note or, where the Purchaser has requested the Supplier to arrange shipping and insurance in accordance with clause 3(b) (i) and (ii), within 14 days of the scheduled arrival date at the port of arrival at the destination outside the United Kingdom:
- d) Failure to Claim. If the Purchaser fails to give notice or report in accordance with this clause, the Supply shall be deemed to have been delivered to the Purchaser free of damage or shortage and otherwise in accordance with the despatch note and the Purchaser shall be bound to pay for it.

8. Payment

- a) Where the Supply is for delivery in the United Kingdom, payment is due in cleared sterling funds 30 days from the date of invoice which shall be raised on delivery unless otherwise agreed. Where the Supply is for delivery outside the United Kingdom, and where not otherwise specified, payment shall be made prior to shipment by an irrevocable letter of credit confirmed for payment by a British Bank in London acceptable to the Supplier. All costs incurred in procuring the letter shall be for the Purchaser's account.
- b) Without limiting any other right or remedy of the Supplier, if the Purchaser fails to make any payment due to the Supplier under the Contract by the due date for payment, the Supplier shall have the right to charge interest on the overdue amount at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998.
- c) Neither party shall be entitled to any right to set off, deduct or withhold monies owed to the other party under this Contract except as required by law.

9. Force Majeure

Should the manufacture or delivery of the Supply be prevented or delayed by industrial dispute or any act or circumstance beyond the Supplier's reasonable control, the Supplier may, without incurring liability to the Purchaser, suspend the Contract and, after at least six months' suspension, terminate it.

10. Purchaser Obligations

- a) The Purchaser shall undertake as a necessary prerequisite of the performance of the Contract, those responsibilities and obligations set out in the Order Acknowledgement.
- b) The Purchaser shall ensure that the Supply is used in accordance with any relevant written information or advice which the Supplier may make available to the Purchaser.
- c) The Purchaser shall take such measures, if any, which have been specified by the Supplier prior to final delivery of the Supply to be necessary to comply with the Supplier's specifications in respect of:
- i) using the Supply in accordance with its instructions and in a safe manner including only using the Supply in an environment in which it is safe to do so
 - ii) the relevant education, training and skills necessary for the safe use of the Supply by the Purchaser and others
 - iii) the security measures applicable to control access to, and use of, the Supply
 - iv) any safety warning given in relation to the Supply including an obligation to update to a new release of software if required in order to continue to use the Supply safely;

- d) The Purchaser acknowledges that the Supply or any part thereof is not intended to be primarily relied upon in or in connection with any safety-related environment. The Purchaser further acknowledges that it has sole responsibility for and warrants and represents to the Supplier that it has and shall maintain at all times sufficient safety precautions, safeguards and protections independent of the Supply.
- e) The Purchaser shall indemnify and keep the Supplier fully indemnified during the continuance of this Contract and thereafter from and against all actions, proceedings, claims, demands, loss, damage, costs and expenses (including legal fees on a full indemnity basis) which may be brought or made or awarded against or settled by the Supplier, whether arising directly or indirectly in contract, negligence or any other tort, statute, by way of indemnity or otherwise howsoever in relation to loss or damage to physical property owned by the employees, contractors or agents of the Purchaser or any third parties whatsoever and in relation to death or personal injury of the Purchaser's employees and its contractors and agents and their employees or any third parties whatsoever arising out of or in connection with the use, non use or failure of the Supply except to the extent caused by the Supplier's negligence.
- f) The Purchaser shall indemnify the Supplier against any liability for defects caused by any changes, addition to or removal of any hardware, software or any other part of the Supply ("Modifications") by anyone other than the Supplier except where such Modifications have been previously approved in writing by the Supplier (such approval not to be unreasonably withheld or delayed). The Purchaser will pay all reasonable costs incurred by the Supplier in approving any such Modifications within 30 days of presentation of an invoice for these costs.

11. Warranties and Liability

- a) Specifications. The Supplier warrants that the Supply (including the Software) substantially complies with its specification as referred to in the Order Acknowledgement and Contract (except where changes are required to ensure compliance with applicable law or regulatory standards), but otherwise reserves the right to improve or alter the Supply without reference to the Purchaser.
- b) Materials and Workmanship. Subject to the provisions of sub clause 11(c), the Supplier warrants that the Non-Consumables manufactured by the Supplier are free from defects in materials and workmanship, provided that this warranty does not cover:
 - i) any part of the Non-Consumables which has been manufactured or modified by a third party. The Supplier will if permitted pass on to the Purchaser the benefit of any warranty or guarantee given by such third party;
 - ii) damage arising through accident, failure to apply replacement parts provided by the Supplier, misuse (including without limitation, use outside the relevant specification) or unauthorised repair of the Non-Consumable;
 - iii) any failure by the Purchaser to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Non-Consumables or (if there are none) good trade practice;
 - iv) any defect in the Non-Consumables arising as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions; or
 - v) any defect in the Non-Consumable arising as a result of the Supplier following any drawing or design supplied by the Purchaser.

- c) Warranty Claims. Any claims under sub clause 11(a) or 11(b) must be made by the Purchaser in writing and received by the Supplier prior to the expiry of twelve months (or such other period as is specified in the Order Acknowledgement) from the date of delivery of the Supply.

On receipt of a claim under this sub clause the Supplier shall be entitled to inspect the Supply and shall direct the Purchaser either:

- i) to return the Supply or parts thereof (carriage and insurance paid) to the Supplier; or
- ii) to receive the Supplier's engineer at the place where the Supply is installed; the reasonable travel and accommodation expenses of such engineer shall be for the Purchaser's account; or
- iii) to comply with the Supplier's reasonable requests regarding testing and remedying defects in the Supply via email or by such other means as are appropriate.

Where the Supplier is satisfied that any claim is within this warranty, the Supplier's entire liability will be to repair or replace (at its sole option) free of charge any material defect in the Supply.

- d) To the maximum extent permitted by law the Supplier's liability under or in connection with the Contract, whether in contract, negligence any other tort or howsoever arising shall not exceed the price of the Supply as specified in the Order Acknowledgement in respect of any one incident or series of incidents arising from the same cause; the Supplier's aggregate liability under or in connection with this Contract shall not exceed twice the price of the Supply under this Contract. In no circumstances will the

Supplier be liable for direct or indirect loss of profit, revenue, goodwill or business or anticipated savings or for any incidental, special or exemplary damages arising in any way out of or in connection with the Contract; or indirect or consequential loss or damage; or death or personal injury except where caused by the Supplier's negligence or the negligence of the Supplier's employees, contractors or agents or their employees.

- e) Except as expressly provided under sub clauses 11(a) to 11(d), all terms, conditions and warranties, statutory or otherwise, relating to the Supply (including satisfactory quality, its fitness for any purpose) are excluded from the Contract to the maximum extent lawfully permissible, including without limitation in respect of any repaired or replaced Equipment or Software

12. Infringement

- a) The Supplier shall indemnify the Purchaser from and against all claims, proceedings, damages, costs and expenses arising from the infringement by the use of the Supply of any patent, trademark or copyright or other intellectual property right of third parties effective in the United Kingdom at the date of Order Acknowledgement, provided always that this indemnity shall not apply if the Supply or any part thereof is used other than as permitted under the terms of this Contract.
- b) If any claim is made or action brought against the Purchaser arising out of matters referred to in this clause the Supplier shall be promptly informed and may at its own expense and at its own discretion conduct all negotiations to settle the claim and any litigation that may arise from it. The Purchaser shall not, unless and until The Supplier shall have failed within a reasonable time to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto.
- c) If the Supply or any part thereof becomes or is likely to become the subject of an action or claim of patent, trademark or other intellectual property right or copyright infringement, the Supplier shall, in its own discretion and at its own expense, either procure for the Purchaser the right to continue to use the Supply or modify the Supply in order that it no longer infringes. Provided however, that if none of these options is made available and the Purchaser must cease to use the Supply, the Purchaser's exclusive remedy in respect thereof shall be the Supplier's obligation to refund all sums paid in respect of the Supply.
- d) The forgoing states the entire liability and the exclusive remedy of each of the parties hereto with respect to infringement by use of the Supply of any patent, trademark or copyright or other intellectual property right and is subject to the terms of Clause 11(d) above.

13. Assignment

The Contract is not assignable or transferable by the Purchaser without the prior written consent of the Supplier and is between the Supplier and the Purchaser as principals, but the Supplier may without consent (but without reducing its obligations under the Contract) assign or sub-contract all or any part of its rights and obligations hereunder.

14. Termination

- a) If the Purchaser becomes insolvent or makes default in or commits a material breach of Contract, the Supplier may forthwith on written notice to the Purchaser terminate the Contract without incurring liability to the Purchaser and without prejudice to the Supplier's rights which may have accrued up to the date of termination.
- b) If for any other reason than listed in 14a) above the Purchaser terminates the Contract then a cancellation charge of 10% of the total contract value shall apply, subject to a minimum charge of £250. The cancellation charge excludes VAT.

15. Waiver and Severance

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract. If any part or provision of this Contract is held to be invalid, such part or provision shall be struck out and the remainder shall remain in effect.

16. Confidentiality

Each party to the Contract undertakes at all times to hold in confidence for the other party, to use only for the purposes hereof and not to print, publicise or otherwise disclose to any third party, confidential information of the other party.

17. Third Party Rights

Nothing in this Contract confers or purports to confer on any third party any benefit or right to enforce any term of this Contract, and the provisions of the Contracts (Rights of Third Parties) Act 1999 (as amended or modified from time to time) are expressly excluded.

18 Notices

Notices under the Contract must be served in writing and may be served by fax or first class pre-paid post addressed to the receiving party's address as it appears in the Contract. Notices served by fax shall be deemed received immediately following despatch (subject to evidence of successful transmission) and notices served by post shall be deemed to have been received two business days after posting to a UK address. Where the Purchaser is overseas notices served by post shall be deemed to have been received seven business days after posting.

19. No Partnership

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

20. Interpretation

These Conditions shall apply to the exclusion of any of the Purchaser's terms and conditions. No variation or addition to the Contract or these Conditions shall be effective unless contained on the face of the Order Acknowledgement or in a written instrument signed by a director or a duly authorised representative of the Supplier and a copy of such instrument is annexed to the Order Acknowledgement. Without prejudice to either parties liability for fraudulent misrepresentations made to the other prior to the date of this Contract, the Contract shall form the entire agreement between the Supplier and the Purchaser with respect to the subject matter thereof which supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between them relating thereto. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English Law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.

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