

Eiger Design GmbH Terms and Conditions of Sale (“EDG Terms”)

These terms and conditions govern the sale of all products and services (“Products”) by Eiger Design GmbH (“Company”) The complete and entire agreement between Company and Customer is comprised of: (i) these EDG Terms; and (ii) any supplemental terms applicable to such Products, (the “Supplemental Terms” as defined below), which are hereby incorporated by reference. These terms apply notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other document or communication from Customer. By ordering, receiving, accepting or using Products or otherwise proceeding with any transaction after receipt of notice of these EDG Terms, Customer accepts these EDG Terms.

In the event of a conflict between the EDG Terms, and any Supplemental Terms, the EDG Terms will prevail unless the parties expressly agree otherwise. For explanatory purposes only, the EDG Terms contain the main terms and conditions that govern the commercial relationship between Company and Customer, the Supplemental Terms include supplemental terms specific to Products or certain other documents or communications provided by the Company that describe the Products.

1. DEFINITIONS.

“Company” means Eiger Design GmbH.

“Company Information” means (i) any technical or other information related to Products (including, but not limited to, any documentation, services offerings, and written, visual, and oral instructions), and (ii) any Intellectual Property owned, or provided to Customer, by Company.

“Confidential Information” means any confidential, proprietary or trade secret information of the disclosing party (“Discloser”) that is marked as confidential, secret or with a comparable legend or that is disclosed under circumstances that place the receiving party (“Recipient”) on reasonable notice that the information is confidential. Company Information is Confidential Information. Confidential Information does not include information that (i) is generally known because of no act or omission by the Recipient; (ii) was lawfully received by the Recipient without restriction on disclosure; (iii) was already known by the Recipient without any duty of confidentiality; or (iv) was independently developed by the Recipient without the use of Confidential Information of the Discloser.

“Documentation” means Company’s then-current, generally available user guides and manuals for Products.

“Intellectual Property” means any computer program, algorithms, know-how, hardware and/or software configurations, inventions, documentation, translations, text and other works of authorship, data, databases, information, designs, utility models, symbols, logos, marks, names, procedures, processes, technical improvements and any other intangibles.

“Product” means hardware, Software, services and/or combination of Products and services.

“Proprietary Rights” means any and all worldwide and/or territorial rights, title, ownership and interest in and to copyrights, mask works, industrial designs, trademarks, service marks, trade names, trade secrets, patents, and any other rights to Intellectual Property, whether or not perfected.

"Software" means the Company's proprietary software, including all related Documentation and any modifications or updates. Software does not include any computer programs provided under a third party license agreement, but it may include third party software sublicensed to Customer by Company under the terms of this agreement.

"Supplemental Terms" means the terms of the specific quote, order, order acknowledgment, statement of work, invoice, and/or other document or communication provided by Company that describes the Products purchased or licensed and which incorporates these EDG Terms by reference

2. DELIVERY

- 2.1. Company will deliver all Products Ex Works (Incoterms 2010), Company's premises or Company's designated delivery point. Customer is responsible for obtaining appropriate insurance coverage and transportation arrangements with respect to the Products. Risk of loss and title to Hardware pass to Customer at the time of delivery (the "Delivery Date"). Customer shall be the importer of record unless otherwise set forth in the Supplemental Terms.
- 2.2. Prior to shipment, Customer may cancel any delivery of Products under these EDG Terms with written notice to and approval by Company, and upon payment of cancellation charges as determined by Company in its discretion.
- 2.3. Customer may request that Company postpone shipment up to sixty (60) days after the scheduled shipment date, provided that (i) Customer compensates Company for any resulting costs (including but not limited to storage costs); (ii) Company receives Customer's written request at least sixty (60) days prior to the scheduled shipment date; and (iii) if Customer subsequently cancels shipment pursuant to the terms herein, the scheduled shipment date shall be the original shipment date and not the rescheduled shipment date for purposes of determining the cancellation charges.

3. PAYMENT TERMS.

- 3.1. Customer shall pay Company the purchase price, support and other fees (if any) for those Products purchased by Customer, as set forth in the applicable Supplemental Terms or quotation (collectively, the "Fees").
- 3.2. Except as specifically set forth in the Agreement, all Fees are non-refundable. Payments due under the Agreement shall be made in Swiss Francs (CHF unless otherwise agreed, and in the manner and amounts and at the times set forth in the applicable Supplemental Terms or quotation or, if not indicated therein, within 30 days of the date of invoice.
- 3.3. If Customer fails to timely pay any amount when due and following the expiry of 5 business days written notice from Company of such failure, Customer shall pay, in addition, interest at the rate of 1½% per month, but not to exceed the maximum allowed by law, on such delinquent amount.
- 3.4. All Fees are exclusive of sales, service, value-added, and withholding taxes, customs duties, and other taxes and charges, insurance, and costs related to transportation and special packaging requested by Customer, if any. Any such charges and costs shall be paid or reimbursed by Customer, except for taxes imposed on Company's net income. If any withholding taxes apply, Customer shall gross up the invoiced amount to ensure that, after such withholding, Company receives the full amount invoiced.

4. LIMITED WARRANTY AND DISCLAIMER.

4.1. Company warrants that, on the date of delivery through the duration of the Warranty Period, the Products will (i) function properly under normal use; (ii) be free from defects in materials or workmanship; and (iii) conform to specifications agreed to in writing by the parties, subject to the following limitations and exclusions:

4.1.1. Customer has no warranty rights with respect to defects or non-conformities caused by (i) use of the Products with hardware or software that Company has not specified as suitable; (ii) Customer's failure to operate the Products in accordance with Documentation; (iii) failure to implement any updates, upgrades, and other new releases of Software made available to Customer and identified as critical by Company; (iv) acts or omissions of persons other than Company or its authorized representatives; or (v) abuse, use at an unsafe or not suitable site, unusual physical or electrical stress.

4.2. If a Product materially fails to conform to the limited warranty set forth above, Company shall, either (i) repair or replace the non-conforming Product to remedy the non-conformity, or (ii) refund to Customer the amounts paid for the Product in exchange for return of the nonconforming Product. Customer hereby transfers to Company title and ownership of any parts that Company replaces at Customer's request. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST COMPANY WITH RESPECT TO ANY NON-CONFORMING PRODUCTS.

4.3. Unless otherwise set forth in the Supplemental Terms, the warranty period shall be 12 months, beginning on the Delivery Date (the "Warranty Period"). For Products that Company repairs or replaces pursuant to Section 4.2, the warranty period shall be the greater of 90 days beginning on the date of Customer's receipt of the repaired Products or parts or 12 months from the initial Delivery Date of the non-conforming Product. Customer shall have no warranty claims, unless Company receives from Customer, during the warranty period, (i) a written notice describing the warranty failure in reasonable detail (a "Warranty Claim"), and (ii) remote and physical access to the affected Products as well as information in sufficient detail to enable Company to reproduce and analyze the failure.

4.4. If Company receives a Warranty Claim, Company will not charge for any repair, replacement, error identification, or correction of the non-conforming Product, or for return shipment of any repaired Hardware to Customer, except for any costs that are caused by Customer's relocation of the Hardware from the destination to which it was originally delivered by Company. Customer must prepay freight and insurance charges for the return shipment of the non-conforming Product to Company. If Customer's Warranty Claim fails to meet any of the requirements set forth above, Company will charge on a time and materials basis for any error identification or correction efforts, repair, replacement, and shipment costs by Company and Customer shall compensate Company accordingly.

4.5. EXCEPT AS SPECIFIED ABOVE, COMPANY MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT AND, WITHOUT LIMITING THE FOREGOING,

MAKES NO WARRANTY THAT ANY OF THE PRODUCTS WILL BE ERROR-FREE OR THAT THEIR PERFORMANCE OR OPERATION WILL BE UNINTERRUPTED.

5. LIMITATION OF LIABILITY

- 5.1. Subject to section 5.3, in no event shall either party have any liability for any indirect or consequential loss or damage howsoever caused.
- 5.2. Subject to section 5.3, the aggregate liability of Company under this Agreement or in connection with any Solution shall not exceed the equivalent of US\$1,000 or the fees paid or payable by Customer to Company for the Product, which shall in no event exceed fees paid within the preceding 12 months for Products.
- 5.3. The exclusions and limitations apply to all causes of action, including, without limitation, breach of contract, tort (including, but not limited to, negligence), or any other legal theory, save that nothing in this Agreement shall exclude or limit either party's liability for (i) fraud or fraudulent misrepresentation; (ii) death or personal injury caused by its negligence; (iii) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; (iv) any matter for which it would be unlawful for the parties to exclude liability; or (v) breach of a party's confidentiality obligations set forth in these EDG Terms.

6. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY.

- 6.1. Recipient will protect the secrecy of Discloser's Confidential Information with the same degree of care as it uses to protect its own confidential information, but in no event with less than due care. Subject to Recipient's obligation to comply with applicable law and regulatory requirements, Recipient shall not disclose the Confidential Information of Discloser except to employees (including independent contractors), affiliates, subsidiaries, consultants and other agents of Recipient who have at least an equivalent confidentiality obligation to Recipient and who have a need to know such Confidential Information. The Confidential Information disclosed by Discloser may only be used by Recipient as necessary to perform its obligations or exercise its rights under the Agreement.
- 6.2. Customer acknowledges and agrees that, as between Company and Customer, title to and ownership of the Products (excluding any Hardware and/or third-party software purchased by Customer), including all corrections, enhancements, or other modifications to the Software, whether made by Company or any third party, and all Proprietary Rights therein, are and will at all times be deemed the sole and exclusive property of Company or its suppliers, as applicable. All rights not expressly granted to Customer in the Agreement are reserved by Company. Company acknowledges and agrees that, as between Company and Customer, title to and ownership of the Customer Information and all Proprietary Rights therein, are the property of Customer or its suppliers, as applicable.

7. CHOICE OF LAW AND MEDIATION.

- 7.1. The construction, validity and performance of this Agreement and all non-contractual obligations arising from or connected with this Agreement shall be governed by the laws of England and Wales.

7.2. The parties will attempt to resolve any dispute relating to the Agreement by good faith negotiation between business principals for 10 business days. Thereafter, in the event of any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, the parties will seek settlement of that dispute by mediation under the London Court of International Arbitration (LCIA) Mediation Rules, which Rules are deemed to be incorporated by reference into this clause. Each party will bear its own costs of mediation. Notwithstanding the foregoing, a party will have the right at any time to seek a temporary or permanent injunction or other equitable remedy or relief in any court anywhere in the world.

8. TERM AND TERMINATION.

- 8.1. This Agreement shall remain in effect unless and until it is terminated in accordance with this section.
- 8.2. Each party may terminate this Agreement for convenience with 60 days prior written notice to the other party. Except as expressly provided in this Agreement, any termination of this Agreement shall not affect any rights or obligations of the parties under any accepted Supplemental Terms that became legally binding before the termination of the Agreement became effective.
- 8.3. Sections of these EDG Terms and any other provisions of the Agreement that by reasonable interpretation are intended by the parties to survive the termination or expiration of the Agreement will survive termination of the Agreement.

9. MISCELLANEOUS.

- 9.1. Each party shall be responsible for its own compliance with laws, regulations and other legal requirements applicable to the conduct of its business and the Agreement. The Products, including any third-party software, licensed or sold under this Agreement, and the transactions contemplated by this Agreement, which may include technology and software, are subject to the customs and export control laws and regulations of the United States, the EU, UK, Switzerland, and any country in which the products are manufactured, received or used.
- 9.2. All notices, consents and approvals under the Agreement must be delivered in writing by e-mail, by courier, by overnight mail service or by certified mail.
- 9.3. All references to days shall be to calendar days, except as expressly noted otherwise. All scheduled shipment dates, delivery dates, and other dates are non-binding estimates, unless a duly authorized representative of Company expressly agrees in writing that a certain date shall be legally binding.
- 9.4. The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it.
- 9.5. If either party (i) becomes insolvent, (ii) suspends its business, or (iii) files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, which petition is not dismissed within 30 days, then in each case the other party may immediately cancel any outstanding part of any order without penalty.
- 9.6. Except for Customer's payment obligations for Products, neither party will be liable for any failure or delay in performance under the Agreement which might be due in whole or in part,

directly or indirectly, to any contingency, delay, failure, or cause of, any nature beyond the reasonable control of such party, including, without limitation, fire, earthquake, storm, flood, power outage, strike, war, act of terrorism, law, export control regulation, instructions of government authorities or judgment of a court (not arising out of breach by such party of the Agreement).

- 9.7. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree that any invalid provision will be deemed to be restated so as to be enforceable to the maximum extent permissible under law consistent with the original intent and economic terms of the invalid provision.
- 9.8. No person other than a party to this Agreement shall be entitled to enforce any term of this Agreement, save that where an agreement is entered into pursuant to which any rights and/or obligations contained in this Agreement are permissibly assigned or novated to a third party, nothing in this clause shall, of itself, operate to prevent the assignee from taking the benefit of, and enforcing, any rights so assigned.
- 9.9. Subject to section 5.3, this Agreement contains all the terms agreed between the parties regarding the subject matter and supersedes and replaces any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently). Without prejudice to the foregoing, the only remedy available to a party in respect of a breach of any representation which is incorporated into this Agreement shall be for breach of contract.