



TERMS AND CONDITIONS FOR THE SALE OF CCS PRODUCTS

This Agreement is made the [] 20[] (Effective Date)

between

Cambridge Communication Systems Limited a company incorporated and registered in England and Wales with company number 07266974 and having its offices at Victory House, Vision Park, Chivers way, Impington, Cambridge, CB24 9ZR.

and

[] (the Customer)

BACKGROUND

This document outlines the terms and conditions of sale for Products sold by CCS.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Hardware: means the hardware and electronics comprising or comprised in the Products.

Intellectual Property Rights: means all copyright, database rights, topography rights, design rights, trademarks, trade names, utility models, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Products.

Limited Warranty: has the meaning set out in clause 4.1.

Order: the Customer's order for the Products, as set out in the form attached at Schedule 1 of this Agreement.

Products: means those products comprising Hardware and Software described in the attached Order at Schedule 1 of this Agreement.

Software: means the computer executable binary code in object form that is made available under the software license at clause 3.8.

Specification: means any and all designs, drawings, plans, specifications pertaining to the Products (including Product testing, quality and packaging) as described in the attached Order.

VAT: value added tax chargeable under the UK Value Added Tax Act 1994.

1.2 Interpretation:

- a) unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;
- b) clause headings shall not affect the interpretation of this Agreement;
- c) a reference to a person shall include individuals, firms, partnerships, companies, governments, non-governmental bodies and any organisation having legal capacity;
- d) a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- e) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- f) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- g) references to clauses are to the clauses of this Agreement; and
- h) a reference to writing or written includes e-mail.

2. ORDERS

- 2.1 The Order constitutes an offer by the Customer to purchase the Products in accordance with this Agreement. The Customer is responsible for ensuring that the Order and any applicable Specification requirements submitted are complete and accurate.
- 2.2 An Order shall only be deemed to be accepted when CCS issues a written acceptance of the Order.
- 2.3 The Customer may submit further orders that, once accepted by CCS in accordance with clause 2.2 shall be governed by this Agreement.
- 2.4 The Customer may by written notice to CCS make changes to the method of shipping or packing, or time or place of delivery of the Products (a **Change**). CCS may inform the Customer of the reasonable cost of a Change and if the Customer decides to proceed with the Change then the Customer shall pay CCS's reasonable cost for such Change.
- 2.5 CCS reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

3. DELIVERY AND SOFTWARE LICENCE

- 3.1 The risk in the Products shall pass to the Customer either when its agent collects from CCS's warehouse or when delivery is made to the Customer.
- 3.2 Customer shall be entitled to use the Software in accordance with the software licence set out at clause 3.8 and as such title to Software shall not pass to Customer at any time.
- 3.3 Notwithstanding delivery and passing of the risk in the Products, legal and beneficial ownership of the Hardware shall remain with CCS until CCS has received the purchase price in full as well as any other payments due to CCS under this Agreement. Until ownership passes, the

Customer shall hold the Hardware as bailee of CCS and must keep the Hardware free from any charge lien or other encumbrance. CCS shall be entitled at any time either to require the Customer to deliver the Products to CCS or allow CCS (with or without prior notice) to enter the premises where the Products are stored and repossess the same. All charges incurred by CCS in either respect shall be the Customer's responsibility. If the Customer purports to sell the Products before payment in full is made to CCS, the proceeds of the sales shall belong to CCS until payment in full has been received by CCS.

- 3.4 CCS shall mark, pack, package, crate, transport, ship and store each Product to ensure:
- a) delivery of the Product to its ultimate destination in safe condition;
 - b) compliance with all requirements of the carrier and destination authorities; and
 - c) compliance with any special instructions of the Customer.
- 3.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. CCS shall not be liable for any delay in delivery of the Products or the Customer's failure to provide CCS with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 3.6 If CCS fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products of similar description and quality in the cheapest market available, less the price of the Products. CCS shall have no liability for any failure to deliver the Products to the extent that such failure is caused by the Customer's failure to provide CCS with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 3.7 Acceptance of the Product shall occur no later than three (3) Business Days from the date CCS informs the Customer in writing by email that the Product is complete and available. Notwithstanding anything to the contrary, the Product shall be deemed accepted if not rejected within this period.
- 3.8 In consideration of the payment in full and in accordance with clause 5, CCS hereby grants to the Customer a non-exclusive, non-transferable right to use the Software on the Hardware for the purpose of operating the Products.
- 3.9 The Customer shall ensure that the any Products received from CCS, will not be exported, diverted, transferred or otherwise disposed of in violation of any import or export legislation, either in their original form or after being incorporated into other items and shall be responsible for obtaining at their expense any licence or complying with any import legislation.
- 3.10 The Customer shall not disassemble, decompile, reverse engineer or convert the whole or any part of the Products, including the Software, (except to the extent that such restriction on disassembly, decompiling or reverse engineering is prohibited by law and then the Customer shall provide CCS with prompt written notice prior to any such action).

4. QUALITY AND WARRANTY

- 4.1 CCS warrants to the Customer that:
- a) on delivery, and for a period of twelve (12) months from the date of delivery, the Hardware shall conform in all material respects with the Specification; and
 - b) on delivery, and for a period of ninety (90) days from the date of delivery, the Software shall conform in all material respects with the Specification,

together the Limited Warranty.

4.2 Subject to clause 4.3 and provided that the Customer:

- a) within three (3) Business Days of identifying a fault, gives notice in writing to CCS during the Limited Warranty period and that some or all of the Products do not comply with the warranty set out in clause 4.1;
- b) first contacts CCS for a returns authorisation number which must be clearly visible on the returned package (items returned in packages not clearly showing a returns authorisation number will be refused);
- c) insures such Products for shipping at the Customer's cost; and
- d) returns such Products to CCS's place of business at the Customer's cost,

then CCS shall, at its sole option, provide one of the following remedies:

- i) repair or facilitate the repair of any defective parts within a reasonable period of time, free of charge for the necessary parts and labour to complete the repair and resolve the Products to its proper operating condition. CCS will also pay the reasonable shipping costs necessary to return this Products once the repair is complete; or
- ii) replace the Products with a direct replacement or with similar Products deemed by CCS to perform substantially the same function as the original Products; or
- iii) issue a refund of the original purchase price less depreciation to be determined based upon the age of the Products at the time remedy is sought under the Limited Warranty.

4.3 CCS shall not be responsible for any costs associated with the removal or re-installation of the Products from or into any installation. CCS is not responsible for any costs associated with setting up the Products and adjustment to any associated controls or programming required for a specific installation of the Products.

4.4 CCS shall not be liable for the Products' failure to comply with the Limited Warranty set out in clause 4.1 in any of the following events:

- a) the label bearing the serial number of the Products has been removed or defaced;
- b) the Products have not been purchased directly from CCS or through an authorised channel reseller of CCS products;
- c) the Products have not been distributed by CCS;
- d) the Customer makes any further use of such Products after giving notice in accordance with clause 4.2;
- e) the defect arises because the Customer failed to follow CCS's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) Product trade practice regarding the same;
- f) the Customer alters or repairs such Products without the written consent of CCS;
- g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- h) the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 4.5 The Limited Warranty does not apply to any Product damage caused by deterioration or malfunction resulting from any alteration, modification, improper or unreasonable use or maintenance, misuse, abuse, accident, neglect, exposure to excess moisture, heat, lightning strike, power surges earthquakes, flood or other acts of nature. The Limited Warranty does not cover any damage, deterioration or malfunction resulting from the installation or removal of the Products from any installation. Any unauthorised tampering with the Products, any repairs attempted by anyone other than CCS or a party authorised in writing by CCS to make such repairs, or any other cause which does not relate directly to a defect in materials and/or workmanship of the Products. The Limited Warranty does not cover cartons, equipment enclosures, cables or accessories used in conjunction with the Products.
- 4.6 Except as provided in this clause 4, CCS shall have no liability to the Customer in respect of the Products' failure to comply with the Limited Warranty set out in clause 4.1.
- 4.7 Save as set out in this clause 4, to the fullest extent permitted by law, CCS makes no express or implied warranty or representation concerning the Products and therefore excludes all conditions, warranties and representations (express or implied), statutory or otherwise in respect of the Products and any deliverable under the Agreement.

5. CHARGES AND PAYMENT

- 5.1 In consideration of the provision of the Products by CCS, the Customer shall pay the charges as set out in the Order.
- 5.2 The total price for the Products shall be the amount set out in the Order. CCS shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials (and VAT, where appropriate).
- 5.3 All charges under this Agreement exclude VAT, which CCS shall add to its invoices at the appropriate rate.
- 5.4 CCS may, by giving notice to the Customer at any time before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
- a) any factor beyond CCS's control (including foreign exchange fluctuations, 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 Products ordered, or the Specification; or
 - c) any delay caused by any instructions of the Customer or failure of the Customer to give CCS adequate or accurate information or instructions.
- 5.5 CCS may invoice the Customer for the Products on or at any time after the completion of delivery.
- 5.6 The Customer shall pay each invoice which is properly due and submitted to it by CCS in full by the end of the month following the month the invoice was dated to a bank account nominated in writing by CCS. All payments under this Agreement will be in the currency of US dollars (\$).
- 5.7 If the Customer fails to make any payment due to the other party under this Agreement by the due date for payment, then, without limiting CCS's remedies under clause 8, the Customer shall pay interest on the overdue amount at the rate of five percent (5%) per annum above HSBC plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 5.8 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). CCS may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by CCS to the Customer.

6. INDEMNITY AND LIABILITY

- 6.1 Subject to the Customer using the Products in accordance with CCS's instructions and the Specification, CCS shall indemnify the Customer against damages, costs and reasonable legal fees assessed by final judgement against the Customer arising out of or in connection with any actual infringement under English law of any third party's Intellectual Property Rights. Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
- 6.2 Nothing in the Agreement shall operate to exclude or limit CCS's liability in relation to (a) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors; or (b) fraud or fraudulent misrepresentation; or (c) any other liability that cannot be excluded or limited by law.
- 6.3 Subject always to clause 6.2, CCS shall not under any circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- a) loss of profit;
 - b) loss of goodwill;
 - c) loss of business;
 - d) loss of business opportunity;
 - e) loss of anticipated saving;
 - f) loss or corruption of data or information; or
 - g) special, indirect or consequential damage,
- suffered by the Customer under or in connection with this Agreement.
- 6.4 Subject always to clauses 6.2 and 6.3, CCS's total aggregate liability arising under or in connection with this Agreement, including CCS's liability under clause 6.1, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the fees paid by Customer to CCS under the Order to which the claim relates.
- 6.5 The provisions of this clause 6 shall survive termination of this Agreement, however arising.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Except as expressly provided herein or as may be agreed in writing between the parties from time to time, the Customer will not receive any rights by implication or otherwise in any Products received by them under the Agreement. Unless otherwise explicitly agreed in writing, CCS will retain:

- a) all Intellectual Property Rights it possesses with regard to any and all design, process, manufacturing and other technologies used in or resulting from the development or production of the Products; and
 - b) title to and possession of all tooling, material or equipment CCS uses in the manufacture, testing or assembly of the Products furnished under the Agreement. Neither the Customer nor any third party (whether by implication, operation of law or otherwise) will have any right or licence in or to any patent, copyright, trade secret right, mask work right, or any other Intellectual Property Right not expressly granted by CCS in the Agreement.
- 7.2 The Customer shall not rebrand the Products or remove any copyright notices, confidential or proprietary legends or identification from the Products.

8. TERMINATION

- 8.1 Either party may terminate this Agreement or any Order for convenience on 90 days' written notice to the other party. The term "outstanding Orders", as used in this clause, means any Order that the Customer has issued to CCS but for which CCS has yet to complete the provision of all Products under it.
- 8.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- a) the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified to do so;
 - b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
 - c) that party has a receiver or administrative receiver appointed over it or over any part of its business or assets or pass a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enter into any voluntary arrangement with its creditors, or it ceases or threatens to cease to carry on business.

9. CONSEQUENCES OF TERMINATION

- 9.1 Without limiting its other rights or remedies, CCS may suspend provision of the Products under the Agreement or any other agreement between the Customer and CCS if the Customer becomes subject to any of the events listed in clause 8.2(c), or CCS reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.
- 9.2 On termination of the Agreement for any reason (a) the Customer shall immediately pay to CCS all of CCS's outstanding unpaid invoices and interest; and (b) CCS shall raise an invoice for any work conducted or Products supplied by CCS that have not been invoiced for and such invoice shall be payable immediately on presentation to the Customer.
- 9.3 Clauses that expressly or by implication survive termination of the Agreement shall continue in full force and effect.

- 9.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

10. GENERAL

- 10.1 Both parties shall comply with their obligations at law including the Data Protection Act 1998 and the Bribery Act 2010.
- 10.2 Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from any event outside of that party's reasonable control, including an act of God, war, riot, compliance with any law, regulation or direction, fire, flood, storm (each, a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for two months, the party not affected may terminate this Agreement by giving thirty (30) days' written notice to the other party.
- 10.3 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 10.4 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 10.5 This Agreement and any documents referred to in it constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter of this Agreement. Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents. Nothing in the clause shall limit or exclude any liability for fraud.
- 10.6 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 10.7 Except in the event of a business or share sale, neither party may assign, transfer, charge, or sub-contract its rights or obligations under this Agreement without the written consent of the other.
- 10.8 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership, agency or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 10.9 This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

- 10.10 Any notice under this Agreement must be in writing and must be by either email to a director or officer of the respective party, delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement or such other address as may have been notified by that party for such purposes. A notice delivered by hand will be deemed to have been received when delivered (or if delivery is not in normal business hours, at 9:00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 10.11 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Agreement, its subject matter or its formation (including non-contractual disputes or claims).
- 10.12 This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same agreement. Any copy of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

IN WITNESS WHEREOF the parties agree to be bound and have caused this Agreement to be executed by their duly authorised representatives.

Cambridge Communication Systems Ltd	[Customer]
SIGNED:	SIGNED:
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE:

SCHEDULE 1 ORDER

DATE:

ORDER NUMBER: [REDACTED]

CUSTOMER NAME AND CONTACT DETAILS:

CUSTOMER CONTACT NAME:

PRODUCT AND QUANTITY TO BE SUPPLIED:

ESTIMATED DELIVERY DATE AND COLLECTION DETAILS:

CHARGES:

INVOICE DATES:

SCHEDULE 2: SOFTWARE MAINTENANCE AND SUPPORT

In addition to the definitions contained in Schedule 1 of the Agreement, the following terms shall have the following meanings:

“Enhancement(s)” means a change(s) to the Software, which is intended to improve, or add to the functionality of the Software by adding significant new features or functions.

“Update(s)” means a change(s) to the Software which is intended to fix or improve the functionality of the Software and to correct a Defect as defined in this Schedule. An Update may include some new functionality but the purpose of the Update is to improve aspects of the Software which will not generally impact on the use of the Software by the user, would not require any training for the user and would not require a significant amendment to the user manual.

“Defect” means any significant failure by the Software to perform in accordance with the published specification.

1. SOFTWARE MAINTENANCE AND SUPPORT covers:

- Regular Updates and patches
- Helpdesk telephone support
- Training courses on new products and Updates

Support includes helpdesk telephone support during normal CCS office hours of 9.00 am to 6.00 pm GMT (this will exclude bank holidays etc.) plus updates and software patches and training courses. These items are described in more detail below.

Regular Updates and patches

CCS will supply all Updates to VAR and these will be supplemented by software patches as required.

CCS shall decide in its absolute discretion what constitutes an Enhancement and an Update. Enhancements are chargeable items and need to be agreed on an Order.

VAR shall ensure that Updates are installed on VAR's and Approved End Users' hardware as soon as reasonably practical after delivery to VAR. CCS reserves the right to withhold Software Maintenance and Support if such support would not have been required had an Update been installed which should have been in accordance with this clause.

2. EXTENDED WARRANTY

Extended Warranty for Hardware is available for one further year over and above the Standard Warranty as defined in clause 15 of Schedule 1 and may be extended further by mutual agreement of VAR and CCS. Agreement for Extended Warranty shall be taken out at the time of the purchase of the Products and CCS and VAR may mutually agree any subsequent extensions from time to time. This amount will be invoiced on delivery of the Products and shall be payable 30 days

thereafter unless otherwise agreed in writing by CCS and VAR. Extended Warranty cannot be purchased without Software Maintenance and Support.