

These conditions ("Conditions") form an integral part of every contract or agreement for the sale of goods ("the Products") and/or supply of services ("the Services") (in each case, a "Contract") by DynOptic Systems Limited ("the Seller").

1. **DEFINITIONS**

1.1 In these Conditions,

"Buyer" means the person(s), firm or company who purchases the Products and/or Services from the Seller;

"Design" means any design produced by the Seller exclusively for the Buyer during the course of performing the Services pursuant to the Contract;

"Intellectual Property Rights" means any copyright (whether registered or otherwise), unregistered design right, semi-conductor topography works, mask works and other intellectual property rights anywhere in the world together with any current applications for any registrable items of the foregoing.

1.2 In these Conditions:

1.2.1 references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;

1.2.2 references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires; and

1.2.3 headings will not affect the construction of these Conditions.

2. **APPLICATION OF TERMS**

2.1 Subject to any variation under Condition 2.2, the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 Any variation to these Conditions and any representations about the Products and/or Services shall have no effect unless expressly agreed in writing and signed by a Director or authorised signatory of the Seller.

2.3 Any quotation issued by the Seller is an invitation to treat and is not an offer of a contract. Quotations shall be valid for thirty days from date of issue. No contracts shall deem to have

been effected by the acceptance by the Buyer of any quotation made by the Seller until the order constituted by such acceptance has been accepted by the Seller in accordance with Condition 2.5.

2.4 Each order for Products and/or Services by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase Products and/or Services subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Seller and no contracts for the supply of the Products and/or Services will come into existence until a written order of acknowledgement is issued by the Seller and the Seller confirms to the Buyer a delivery date of the Products and/or performance of the Services or (if earlier) the Seller delivers the Products to the Buyer or commences performance of the Services for the Buyer.

3. PRICE

3.1 The price for the Products and/or Services shall be calculated on the basis set out in the Seller's acknowledgement of order, or, in the absence thereof, in accordance with the Seller's price list in force on the date of delivery or deemed delivery of the Products and/or the date that the Seller starts performance of the Services.

3.2 Unless otherwise agreed by the Seller in writing, the price for the Products shall exclude all costs of delivery of such Products which shall be borne exclusively by the Buyer and shall (where delivery is arranged by the Seller) be payable by the Buyer to the Seller at the same time as the price for such Products.

3.3 The Seller shall have the right at any time to withdraw any discount from its normal prices as listed or quoted and/or to revise prices to take into account increases in costs prior to delivery including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.

4. PAYMENT

4.1 Unless otherwise agreed, accounts are due and become payable not later than 30 days from the date of the Seller's invoice.

- 4.2 Unless otherwise specifically stated the purchase price is deemed to exclude Value Added Tax and any other applicable taxes and duties, including but not limited to shipping and excise duties to the extent that such taxes and duties are properly chargeable on the supply to the Buyer of the Products and/or the Services. The Buyer shall pay such taxes and duties as an addition to payments otherwise due to the Seller.
- 4.3 Time for payment shall be of the essence.
- 4.4 All payments shall be in pounds sterling unless the Seller states otherwise.
- 4.4 The Buyer shall not be entitled to withhold payment of an amount payable under the contract to the Seller because of any claim of the Buyer in respect of any alleged breach of the Contract, or of any other contract.

5. INTEREST

If the Buyer fails to pay the Seller any sum due under the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.

6. SUPPLY AND DELIVERY

- 6.1 Delivery of the Products shall be made by the Seller delivering the Products to such place for delivery as is agreed by the Seller or, if agreed by the Seller, by the Buyer collecting the Products at the Seller's premises at any time after the Seller has notified the Buyer that the Products are ready for collection.
- 6.2 Any dates quoted for supply or delivery of Products are approximate only and the Seller shall not be liable for any delay in supply of the Products howsoever caused. Time for supply or delivery shall not be of the essence. The Buyer shall have the right to cancel any order without liability to the Seller if delivery is more than 30 days late.
- 6.3 Where the Products are to be supplied and/or Services are to be performed over a period of time then each supply or performance shall constitute a separate contract and failure by the Seller to supply any one or more of the Products and/or perform any one or more of the Services in accordance with these Conditions or any claim by the Buyer in respect of any one or more Products and/or Services shall not entitle the Buyer to treat the Contract as a whole as repudiated.

- 6.4 If for any reason the Buyer will not accept delivery of any of the Products, or the Seller is unable to deliver the Products on time because the Buyer has failed to provide appropriate instructions, documents, licence, authorisation, components or materials:
- 6.4.1 risk in the Products will pass to the Buyer (including for loss or damage caused by the Seller's negligence);
 - 6.4.2 the Products will be deemed to have been delivered; and
 - 6.4.3 the Seller may store the Products until collected by the Buyer and the Buyer will be liable for all related costs and expenses (including without limitation, storage and insurance).
- 6.5 The Buyer will provide at its expense at the place of delivery adequate and appropriate equipment and manual labour for unloading the Products.
- 6.6 If the Seller fails to supply the Products for any reason, the liability of the Seller shall be limited to, at its discretion, replacing the Products within a reasonable time, issuing a credit note at the pro-rata Contract rate against any invoice raised for such Products or a refund of the purchase price paid.
- 6.7 Any liability of the Seller for non-performance of the Services shall be limited to, at its discretion, issuing a credit note at the pro-rata Contract rate against any invoice raised for such Services or a refund of the purchase price paid.
- 6.8 The quantity of any consignment of Products as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.9 Where a Buyer notifies the Seller of any change it requires to the Services, the parties shall agree in writing the impact of such change on the timetable and cost for the performance of the Services. In the event that the Buyer's proposed change is time critical, the Seller may, at the Client's request, perform such change without written agreement as to the impact of such change, provided that the price and timetable for the Services shall be automatically varied to take account of the actual impact of such change.
- 6.10 The Seller shall not be liable for any non-delivery of Products and/or non-performance of the Services (even if caused by the Seller's negligence) unless written notice is given to the Seller within 2 days of the date when the Products would in the ordinary course of events have been received and/or the Services would have been performed.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Unless otherwise agreed in writing by the Seller, all Intellectual Property Rights in the Products shall remain the exclusive property of the Seller.
- 7.2 Subject to the Buyer paying all monies due to the Seller under the terms of the Contract and any other contract between the Buyer and the Seller, the Seller hereby grants the Buyer a non-exclusive, royalty-free, non-transferable licence of the Intellectual Property Rights in the Design for the purposes of using the Design in its normal course of business (which includes, without limitation, exploiting, reproducing, modifying and developing such Design).

8. RISK AND TITLE

- 8.1 It is a condition of the Contract that the property in all the Products delivered by the Seller to the Buyer shall remain vested in the Seller until the Seller has received in cash or clear funds payment in full for the Products delivered and all Products agreed to be sold by the Seller to the Buyer for which payment is then due.
- 8.2 Until payment due under all contracts between the Buyer and the Seller has been made in full the Buyer shall hold the Products upon trust for the Seller.
- 8.3 Until such time as the property in the Products passes to the Buyer, the Buyer shall hold the Products as the Seller's fiduciary agent and bailee and shall keep the Products separate from those of the Buyer and third parties and (at its own cost) properly stored, protected and insured (on behalf of the Seller for their full price against all risks to the reasonable satisfaction of the Seller) and identified as the Seller's property.
- 8.4 Notwithstanding that the property in all Products to be delivered to the Buyer by the Seller shall remain vested in the Seller until the Seller has received payment in full, the risk of damage to or loss of all or any such Products shall pass to the Buyer forthwith upon delivery or deemed delivery thereof to the Buyer and as from such date of delivery or deemed delivery the Buyer shall be liable to pay to the Seller the contract price for such products whether or not the same are damaged or lost prior to the dates that the property therein shall pass to the Buyer.
- 8.5 The Buyer may resell the Products before ownership has passed to it solely on the following Conditions:

8.5.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

8.5.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

8.6 The Buyer's right to possession of the Products shall terminate immediately if:

8.6.1 the Buyer convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer in any jurisdiction; or

8.6.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

8.6.3 the Buyer encumbers or in any way charges any of the Products; or

8.6.4 anything analogous to the foregoing occurs in any other jurisdiction.

8.7 The Seller shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Seller.

8.8 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

9. WARRANTY AND OTHER RETURNS

9.1 The Seller warrants that (subject to the other provisions of these Conditions) upon delivery and for the period notified to the Buyer, or in the absence of such notified period, for a period of 24 months from the date of delivery ("the Warranty Period"), the Products will:

9.1.1 be free from defects in materials and workmanship; and

9.1.2 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended).

9.2 The Seller warrants that it will provide the Services with reasonable skill and care.

- 9.3 The Seller shall not be liable for a breach of any of the warranties in Condition 9.1 unless the Buyer gives written notice of the defect to the Seller, and (if the defect is as a result of damage arising during transit at the risk of the Seller) to the carrier, within 14 days of the time when the Buyer discovers or ought to have discovered the defect and thereafter complies with the Seller's Product Returns Policy ("the PRP"), a copy of which is available from the Seller on request.
- 9.4 If any Product does not comply with the warranties set out in Condition 9.1 ("Defective Product") the Seller shall deal with such Defective Product in accordance with the PRP .
- 9.5 The Seller shall not be liable for a breach of any of the warranties in Condition 9.1:
- 9.5.1 to the extent that it is attributable to further use of such Products after giving notice pursuant to Condition 9.3; or
- 9.5.2 if the defect arises because the Buyer failed to follow the Seller's reasonable oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (in the absence of such instructions) good trade practice;
- 9.5.3 that are attributable to fair wear and tear, abuse, improper use or use in an environment or for a purpose for which the Product was not designed or intended by the Seller; or
- 9.5.4 if the Buyer alters or repairs such Products without the written consent of the Seller; or
- 9.5.5 if the defect arises as a result of the Seller following the instructions of the Buyer in respect of the Products that are contrary to the Seller's written or oral instructions, advice or recommendations.
- 9.6 If the Seller complies with Condition 9.4 it shall have no further liability for a breach of any of the warranties in Condition 9.1 in respect of such Products.
- 9.7 If the Buyer returns damaged or faulty Products to the Seller in respect of which the warranties at Condition 9.1 do not apply, then provided that the Buyer returns such Products in accordance with the PRP, the Seller shall deal with such returned Products in accordance with the terms of the PRP.
- 9.8 Any Products or parts replaced will belong to the Seller and any repaired or replacement Products will be guaranteed on these terms for the unexpired portion of the Warranty Period.

10 LIMITATION OF LIABILITY

- 10.1 Subject to the provisions of these Conditions, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these Conditions; and
 - 10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 (as amended)) are, to the fullest extent permitted by law, excluded from the Contract. In particular, the Seller does not warrant that the Products will be fit for any purpose made known to it by the Buyer.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation.
- 10.4 The Buyer acknowledges that the price for the Products and/or Services would be higher were the following exclusions not agreed.
- 10.5 Subject to Condition 10.3, the Seller shall not be liable to the Buyer for:
- 10.5.1 any indirect or consequential, special or punitive loss, damage, costs or expenses;
 - 10.5.2 loss of profit;
 - 10.5.3 loss of business;
 - 10.5.4 loss of revenue; or
 - 10.5.5 depletion of goodwill.
- 10.6 Subject to Condition 10.3, the Seller's total liability to the Buyer under or connected with these Conditions for:
- 10.6.1 damage to the Buyer's material property resulting directly from the Seller's negligence or that of its employees shall not exceed £1,000,000 for any one event or series of connected events;
 - 10.6.2 any other loss not covered by Condition 10.6.1 shall not exceed 125% (one hundred and twenty five per cent of the price payable for the Products and/or Services that gave rise to the liability).
- 10.7 The limits in Conditions 10.6.1 and 10.6.2 are based on the Seller's insurance cover and ability to compensate. The limits may be increased if requested but shall be subject to the Seller securing suitable cover and may require an adjustment to the price payable for the Products to reflect any increased premiums.

11. DESCRIPTIONS AND ILLUSTRATIONS

- 11.1 The description of the Products and the Services shall be as set out in the Seller's quotation (if any).
- 11.2 All descriptions, specifications and illustrations contained in the price lists, advertisements and similar literature of the Seller (including the Seller's website) are intended merely to present a general idea of the products described therein and none of these descriptions, specifications and illustrations shall form part of the Contract.

12. FORCE MAJEURE

A party shall not have any liability for any loss or damage if its performance of any obligations under the Contract (other than non-payment of amounts that are due and payable) is delayed, hindered or prevented by any cause beyond its reasonable control, including, without limitation, fire, storm, flood, earthquake, accident, adverse weather conditions, explosions, Acts of God, war, governmental controls, restrictions or prohibitions, strikes, lock-outs, industrial action, employment dispute, protests, traffic congestion, vandalism, interruptions in communications or power supply and mechanical breakdown, failure or malfunction of computer systems. In the event of such delay, hindrance or prevention, such party shall be entitled to postpone delivery or performance by the duration of interference plus a reasonable start-up time thereafter, or to cancel the Contract in its entirety or partially, insofar as it has not been performed without incurring any liability for non-performance.

13. TERMINATION OF CONTRACT

- 13.1 The Seller shall have the right to terminate the Contract at any time by giving at least seven (7) days' notice to the Buyer (or immediately as provided in Condition 13.1.2) in any of the following events, which termination shall be effective upon expiry of such notice (or immediately as provided in Condition 13.1.2):
- 13.1.1 if the Buyer commits a material breach of any of the terms of the Contract and fails to remedy the same within thirty (30) days of being notified of the breach;
- 13.1.2 immediately upon the occurrence of the events in Condition 8.6, or if any material or significant part of the Buyer's undertaking, property, or assets shall be intervened in, expropriated, or confiscated by action of any government.

- 13.2 The Seller may terminate any Contract or suspend further deliveries (without prejudice to the foregoing right of termination) if the Buyer fails to pay any sum as it falls due, unless subject to a bona fide dispute and provided the undisputed amount has been paid.

14 CONSEQUENCES OF TERMINATION

- 14.1 On the termination of the Contract for any reason, the Seller shall not be obliged:
- 14.1.1 to supply any Products or Services ordered by the Buyer unless already paid for; and
 - 14.1.2 all payments payable to the Seller under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 14.2 On termination of the Contract for any reason, the Buyer shall return to the Seller all Products that it has not yet paid for.
- 14.3 The termination of this Contract shall not affect the respective rights and liabilities of each of the parties thereto which accrued prior to such termination nor any provisions which either expressly or impliedly are to remain in operation after termination.

15. WAIVER

The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended by the Seller to the Buyer and no waiver by the Seller in respect of any breach or default by the Seller shall operate as a waiver in respect of any subsequent breach and will in no way affect the other terms of the Contract.

16. THIRD PARTIES

The parties to this Contract do not intend that any term of this Contract will be enforce-able by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

17. ASSIGNMENT AND SUB-CONTRACTING

- 17.1 The Contract and these Conditions shall not be assignable by either party.
- 17.2 The Seller shall have the right to sub-contract any of its duties or obligations under the Contract and agrees that it shall be responsible for the actions or omissions of any sub-

contractor used by it in connection with any of the Products or with satisfying any of the Seller's responsibilities under the Contract.

18. SEVERANCE

18.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

18.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19. NOTICES

19.1 Any notices given under the Contract shall be in writing and shall be sent by registered post, or the recorded delivery service, addressed in the case of a notice to the Seller, to the Seller's registered office, and in the case of a notice to the Buyer, to the address of the Buyer or its representative or agent shown in the Contract.

19.2 Any notice sent by post shall be deemed conclusively to have been served:

19.2.1 in the case of a notice sent to an address inside the United Kingdom, on the day after the same shall have been posted; and

19.2.2 in the case of a notice sent to an address outside the United Kingdom after the normal postal delivery period and in all such cases, proof of posting shall be sufficient notice of service.

20. REGULATORY COMPLIANCE

20.1 Where the Products are being placed on the market in the United Kingdom, the Buyer shall:

20.1.1 be responsible for the collection, treatment, recovery and environmentally sound disposal of:

20.1.1.1 all WEEE arising or deriving from the Products; and

20.1.1.2 all WEEE arising or deriving from products placed on the market prior to 13 August 2005 where such products are to be replaced by the Products and the Products are of an equivalent type or are fulfilling the same function as that of such products;

- 20.1.2 comply with all additional obligations placed upon the Buyer by the WEEE Regulations by virtue of the Buyer accepting the responsibility set out in Condition 20.1.1; and
- 20.1.3 provide the Seller's WEEE compliance scheme operator with such data, documents, information and other assistance as such scheme operator may from time to time reasonably require to enable such operator to satisfy the obligations assumed by it as a result of the Seller's membership of the operator's compliance scheme.
- 20.2 The Buyer shall be responsible for all costs and expenses arising from and relating to its obligations in Condition 20.1.
- 20.3 In this Condition 20, "WEEE" means waste electrical and electronic equipment as defined in the WEEE Regulations and "WEEE Regulations" means The Waste Electrical and Electronic Equipment Regulations 2006 (SI 2006/3289) (as amended).

21. JURISDICTION

These Conditions shall be governed by, and construed in all respects in accordance with English Law and the parties hereby submit to the non-exclusive jurisdiction of the Courts of England.