

**TRL Technology Limited**  
**TERMS AND CONDITIONS OF SALE**

**1. Definitions**

"**Company**" shall mean TRL Technology Limited, Sigma Close, Shannon Way, Tewkesbury, Gloucestershire, GL20 8ND (registered in England and Wales under number 1705039).

"**Conditions**" shall mean these Terms and Conditions of Sale.

"**Contract**" shall mean the Purchase Order as agreed in accordance with clause 4 (Orders).

"**Customer**" shall mean the Customer specified in the Purchase Order.

"**Delivery Date(s)**" shall mean the estimated dates for delivery of Goods and/or performance of Services, as specified in the Contract.

"**Goods**" shall mean all articles and materials to be supplied under the Contract.

"**Intellectual Property**" shall mean any and all rights and interests in patents, trademarks, service marks, design rights (whether capable of registration or not); applications for any of the above rights, copyright, trade or business names or other similar rights whether capable of registration or not in any country including but not limited to England and Wales.

"**Purchase Order**" shall mean the purchase order issued by the Customer to the Company for the supply of Goods and/or Services.

"**Quotation**" shall mean the Company's quotation attached to these Conditions.

"**Services**" shall mean all services to be performed under the Contract, which are not Goods.

**2. Incorporation**

(a) These conditions shall be incorporated into all Contracts made between the Company and the Customer for the supply of Goods and/or Services.

(b) The Company contracts only on the basis of these Conditions.

(c) Any printed or other standard terms and conditions of the Customer are hereby expressly excluded.

**3. Order of Precedence**

If there is any inconsistency between provisions of the Contract, a descending order of precedence, where such documents exist, shall be accorded to:

(a) the Quotation

(b) the Conditions

(c) the Purchase Order

**4. Orders**

Any Purchase Order placed by the Customer shall reference the Quotation number and acceptance of the Conditions. No order placed by the Customer shall be binding on the Company unless and until it has been accepted in writing by the Company.

**5. Prices**

All prices are Free Carrier Unit 11, L-3 TRL, Shannon Way, Tewkesbury (Incoterms © 2010) or as expressed in the Quotation and, unless explicitly stated in the Quotation, exclusive of Value Added Tax.

The Company reserves the right to amend the prices in the Quotation and/or the Contract should factors beyond the control of the Company, detrimentally affect the price by 5% or more.

**6. Terms of Payment**

(a) Invoices shall be paid within thirty (30) days of the date of the invoice.

(b) All payments due from the Customer shall be made without deduction of any set-offs, taxes, charges and other duties (including any withholding or income taxes).

(c) The Company shall be entitled to claim statutory interest on all sums owed by the Customer to the Company from the due date of payment until the date of actual payment thereof whether before judgement or after ("qualifying debt"), in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.

(d) Time for payment shall be of the essence. In the event of non-payment within such 30 day period, the Company shall have the right, in addition to any other remedies available to it, to give seven (7) days notice of its intention to cancel or to suspend production or deliveries under this Contract or any other Contracts made with the Customer unless payment is made within the notice period.

**7. Packing**

Where applicable, the Company's standard retail trade packaging is included in the price. Any special packing requirements may incur an additional charge.

**8. Delivery**

(a) Time for delivery shall not be of the essence.

(b) The Company will endeavour to meet any Delivery Dates.

(c) Unless otherwise expressly stated elsewhere in the Contract, the Company will not be liable under any circumstances for any losses suffered by the Customer due to the failure to meet a specified Delivery Date.

(d) The Company shall notify the Customer when the Goods are available for collection. If the Customer fails to take delivery of the Goods within five (5) working days of notification then the Company reserves the right to hold the Goods, at the risk of the Customer, for a period of time determined by the Company and may charge any additional holding costs. Thereafter the Company may deliver the Goods to the Customer at the Customer's expense.

**9. Title**

(a) Title and property ("ownership") in the Goods shall vest exclusively in the Company and ownership shall only pass to the Customer on receipt, by the Company, of full payment of the delivered Goods.

(b) Neither the Customer nor any other person shall have a lien or charge over the Goods, for whatever reason, prior to full payment being received by the Company.

**10. Risk**

Risk shall pass to the Customer in accordance with the Incoterms stated in clause 5.

**11. Acceptance**

The Customer shall have ten (10) working days, from the date the Goods are made available, to either accept or reject the Goods. Thereafter the Goods shall be deemed accepted.

**12. Warranty**

All warranty claims should, in the first instance, be notified to the Company's Customer Support Helpdesk on +44 (0)1684 852896 or [trl.supporthelpdesk@trl-3com.com](mailto:trl.supporthelpdesk@trl-3com.com) or fax on +44 (0)1684 276086, during the Company's normal office hours: 08:30 – 17:30 Monday to Thursday and 08:30 to 12:00 on Fridays, excluding UK public holidays. All timings are UK local time.

(a) **Hardware Products**

The Company warrants its hardware against defect in materials or workmanship for a period of 12 calendar months from acceptance in accordance with clause 11. In the event of a warranty failure, the Company reserves the right to repair or replace the defective item.

(b) **Software and Firmware Products**

The Company warrants for a period of 12 calendar months from acceptance in accordance with clause 11 that its software and firmware designated by it for use with its Goods will substantially conform to its specification when properly installed on the Goods. The Company does not warrant that the operation of its software or firmware will be uninterrupted or error-free.

(c) **Radio frequency interference**

The Company warrants the accuracy of the measurements it makes on the Customer's particular equipment it tests. The Company does not warrant that those measurements will conform to measurements made on equipment of the Customer not tested by the Company.

(d) **Repairs**

(i) The Company warrants the repair of a hardware item (or at its discretion replacement items) undertaken during the warranty period at 12(a) against defects in materials or workmanship for the remainder of the warranty period or 6 calendar months from the return delivery to the Customer of the repaired item, whichever is the greater.

(ii) The Company warrants the repair of a hardware item (or at its discretion replacement items) undertaken after the expiry of the warranty period at 12(a) against defect in materials or workmanship for a period of 3 calendar months from the date of return delivery to the Customer.

(e) **Services**

The Company warrants that the Services shall be performed by suitably qualified and trained staff utilising all reasonable skill and care in accordance with best industry practice.

(f) **Warranty Limitation**

(i) The Customer acknowledges and accepts that the warranties stated herein and associated remedies are its sole and entire warranties and remedies in connection with the supply of Goods and performance of any work carried out under the Contract by the Company. All other representations and warranties that may otherwise be implied (by statute or otherwise) in relation to such supply are excluded to the fullest extent permitted by law.

(ii) The Company shall not be liable for any defects caused by fair wear and tear, use of equipment other than in accordance with the Company's oral or written instructions, equipment being used outside its specifications, equipment used other than for its intended purpose, failing to correctly configure, install, store and/or maintain the equipment in accordance with the Company's guidelines.

**13. Limitation and Exclusion of Liability**

In no event shall the Company be liable for indirect, special, consequential, multiple or punitive damages, or any damage deemed to be of an indirect or consequential nature (including, without limitation, loss of anticipated savings, profit, revenue, goodwill, production, business interruption, use or contracts, or losses consequent upon loss or corruption of data nor the cost of reconstituting data) arising out of or related to its performance under the Contract, whether based upon breach of contract, warranty, negligence and whether grounded in tort, contract, civil law or other theories of liability, including strict liability. To the extent that this limitation of liability conflicts with any other provision(s) of this Contract, said provision(s) shall be regarded as amended to whatever extent required to make such provision(s) consistent with this provision. In no event shall the total cumulative liability of the Company or its subcontractors or suppliers of any tier with respect to direct damages of the Customer whether in contract, warranty, tort (including negligence or strict liability) or otherwise for the performance or breach of the Contract or anything done in connection therewith exceed 100% of the Contract value. Notwithstanding anything else in the Contract to the contrary, the stated monetary limitation hereinabove is the maximum liability the Company has to the Customer. Notwithstanding the above, this clause is not intended to limit liability for death, or personal injury, fraud or fraudulent misrepresentation.

#### 14. Intellectual Property Rights

The Intellectual Property relating to the Goods, the Services or software or disclosed to the Customer in connection with any order or proposal, are the exclusive property of the Company ("Owned Assets"). The Customer shall not:

- (a) Decompile, reverse engineer, disassemble, trace or otherwise analyse the Goods or software, their content, operation, or functionality;
- (b) Modify, adapt, or translate the Goods or software, nor create derivative works based on the Goods or software; or
- (c) Disclose any proprietary information regarding the owned assets to any other persons or companies without the Company's prior written approval.

Unless otherwise specified all software and printed documentation of the Company may not be copied except for archive purposes or to replace a defective copy or for programme error verification by the Customer and the Customer acknowledges the copyright therein belongs to the Company.

#### 15. Confidentiality

Except with the consent in writing of the Company, the Customer shall not, for the term of the Contract and for five (5) years thereafter, disclose any details of the Contract or the Goods, software and / or Services for any purpose (including publicity or in connection with exhibitions) to any person other than a person employed by the Customer in the carrying out of the Contract accepting a like obligation. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of the Contract.

Upon expiry or earlier termination of the Contract, the Customer shall return or destroy (with destruction certification provided) any and all of the Company's proprietary information to the Company.

#### 16. Insurance

- (a) The Customer shall maintain an adequate insurance policy to cover the risk of suffering loss and/or damage as a result of the Customer's negligence, breach of contract or other default.
- (b) The Customer undertakes that such insurance policy will provide for a waiver of all rights or subrogation against the Company, its servants or agents.

#### 17. Representations, Warranties, Variation of Contract

No representation, warranty, addition to or variation of the Conditions or the Contract shall be binding on the Company unless the same is in writing and signed by one of its directors or personnel holding delegated authority.

#### 18. Force Majeure

The Company shall be under no liability to the Customer in the event that its performance of the Contract is affected wholly or partially by any restriction imposed by a government or other competent authority, strike, lock-outs, a failure in the Company's anticipated supplies or raw materials or any other cause whatsoever which is beyond the Company's control.

#### 19. Specifications and Information

- (a) Unless expressly agreed in writing by the Company all drawings, design, specifications and particulars of weight and dimensions submitted by the Company are approximate only and the Company shall have no liability in respect of any deviation therefrom. The Company accepts no responsibility for any errors or other defects in any drawings, designs or specifications provided by the Customer, the Company shall be indemnified by the Customer against any and all liabilities and expenses incurred by the Company arising therefrom.
- (b) Subject to any third party rights all drawings, designs, specifications and particulars submitted to the Customer shall remain the property of the Company and shall be immediately returned to the Company at its request.
- (c) All drawings, designs, specifications and information submitted by the Company are confidential and shall not be disclosed to any third party without the Company's written consent.

#### 20. Indemnity

Subject to clause 13, the Company agrees to indemnify and save the Customer harmless from any loss, cost or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or wilful misconduct of the Company, its agents, employees or the Company's affiliates in connection with the Company's work under this Contract.

The Customer agrees to indemnify and save the Company harmless from any loss, cost or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of the Customer, its agents or employees in connection with the Contract.

If the negligence or wilful misconduct of both the Company and the Customer (or a person identified above for whom each is liable) is the sole cause of such damage or injury, the loss, cost or expenses shall be shared between the Company and the Customer in proportion to their relative degrees of negligence or wilful misconduct and the right of indemnity shall apply for such proportion.

#### 21. Notices

Any notice given under this Contract shall be in writing and sent by first class pre-paid post to the Customer's or Company's (as the case may be) registered office and shall be deemed to have been received 48 hours after the date of posting thereof.

#### 22. Waiver

No failure by the Company to exercise or delay in exercising any of its rights or remedies under this Contract shall operate as a waiver of such rights or remedies, or shall prevent the Company from subsequently enforcing any rights or remedies.

#### 23. Termination

Either party may terminate all or a portion of the Contract for cause which is defined as substantial breach of material obligations by the other party.

In the event of termination for cause, the party shall give the other party fifteen (15) working days prior written notice to cure or to commence to cure the alleged breach.

In addition, either party may terminate the Contract if the other becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt or if a receiver is appointed for the whole or any part of its assets.

The Company shall be entitled to payment for all reasonable costs incurred and Goods delivered prior to termination.

#### 24. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

#### 25. Law

This contract shall be subject to the laws of England and Wales.

#### 26. General

(a) All the provisions of the Contract shall be severable. In the event that any one or more of the provisions contained in the Contract shall be invalid, illegal or unenforceable in any respect under any relevant law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(b) Breach by the Customer of any of the obligations set out herein shall entitle the Company to treat the Contract as repudiated.

#### CONDITIONS OF SALE – April 2011