

# STANDARD TERMS AND CONDITIONS OF SALE

## 1. Definitions

"Company"	Saphyrion SAGL, Strada Regina 16, 6934 Bioggio, Switzerland.
"Conditions"	means these terms and conditions.
"Contract"	means any contract between the Company and the Customer for the sale and purchase of Supplies.
"Customer"	means the person(s) or company whose order for the Supplies is accepted by the Company.
"Descriptions"	all specifications, drawings, illustrations, descriptions and technical or other details including, without limitation, any statements regarding compliance with legislation or regulation.
"Goods"	means any goods supplied or to be supplied by the Company to the Customer.
"Intellectual Property"	means any intangible asset that consists of human knowledge and ideas, such as designs, inventions, drawings, etc.
"Party"	means either the Company or the Customer.
"Services"	means any services supplied or to be supplied by the Company to the Customer.
"Supplies"	means any Goods or Services.
"in writing"	includes electronic communications.

## 2. General

The terms and conditions of sale contained herein apply to all quotations made and purchase orders entered into by the Company. These Conditions override and exclude any terms or conditions in or referred to in any negotiations or course of dealing between the Company and the Customer or set out in the Customer's standard terms and conditions. If there is any conflict between these Conditions and Customer's own terms and conditions, these Conditions will prevail unless the Company agrees otherwise in writing. Together with any terms accepted by the Company in connection with an order, these Conditions constitute the entire agreement between the Company and the Customer in relation to the Supplies ordered. Company's failure to object to provisions contained in any communication from the Customer shall not be deemed a waiver of the provisions contained herein. Differing terms and conditions must specifically be authorised in writing by a director of the Company.

## 3. Quotations, Orders and Prices

Company's quotations are subject to confirmation. Verbal agreements are only binding on the Company when confirmed by the Company in writing. The prices mentioned in the quotation or acknowledgement of order apply in respect of specifications and requirements as known to the Company at the time the quotation is made. Subsequent requests for modification, interruptions, or engineering change orders require a written confirmation and entitle the Company to alter the price accordingly. Acceptance of an order only becomes effective upon signature of the respective contract solely on the basis of these Conditions. Supplements, modifications or verbal supplementary agreements require written confirmation by the Company to become effective. Orders are executed in one shot. Partial or multiple deliveries require separate purchase orders. Customer will pay the price for the quantity actually purchased with each separate purchase order. Once placed, no order may be cancelled without prior written agreement by the Company. In such case Customer will pay a cancellation or restocking fee.

## 4. Taxes

All prices are quoted, all orders accepted, and all billings rendered exclusive of Value Added Tax as well as all federal, state and local excise, sales, use and similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future excise, sales, use or similar tax applicable to the sale of the Supplies hereunder shall be paid by Customer, or in lieu thereof, Customer shall provide the Company with a tax exemption certificate, to the taxing authorities.

## 5. Delivery of Goods

All sales are made ex works, Company's point of shipment. All Goods delivered are at Customer's risk and Company's liability as to the delivery ceases upon making delivery of Goods purchased hereunder to carrier at shipping point in good condition, the carrier acting as Customer's agent. All claims for damages must be filed with the carrier. All shipments will normally be made by Parcel Post, Railway Express, Air Express or Air Freight. Unless specific instructions from Customer specify which of the foregoing methods of shipment is to be used, the Company will exercise its own discretion. As far as possible, the quantity ordered will be supplied. Any difference from the quantity shown in the consignment note or invoice must be notified to the Company in writing immediately after receipt of the Goods. Partial shipments are allowed. Customer shall inspect the Goods upon reception and notify the Company of any non-conformance – such as wrong Goods type or quality, physical/mechanical non-conformance to specification or damages – within thirty (30) days from reception of the Goods. After the 30 days period the Goods are considered accepted by the Customer and claims of non-conformance are no longer accepted by the Company.

## 6. Delivery Dates, non Delivery

Although the Company will do the best effort to meet all deadlines indicated by the Customer, delivery dates indicated are always to be regarded as approximate and are not binding to the Company. Failure to comply with delivery dates does not entitle the Customer to claim compensation or cancel the order. The Company shall not be held responsible for any failure to perform arising from causes beyond its control. These causes shall include but not be restricted to fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, epidemic, quarantine restrictions, labour disputes, labour shortages, transportation embargoes, failure or delays in transportation, inability to secure raw materials or machinery for the manufacture of its devices, acts of God, acts of the Swiss Government or any agency thereof, and judicial action. In the event of any such delays the date of delivery shall, at the request of the Company, be deferred for a period equal to the time lost by reason of the delay.

## 7. Payment

All payments of the purchase price for the Supplies shall be made in accordance with the terms agreed as shown in the respective acknowledgement of order or invoice. If the Customer fails to make payment by the due date then, without prejudice to any other right or remedy, the Company shall be entitled to: 1. Cancel the order or suspend any further deliveries or performance; 2. Appropriate any payment made by the Customer to such of the Supplies (or the Supplies made under any other contract) as the Company may think fit; and 3. Charge interest (both before and after any judgement) on the amount unpaid at the rate of 5% per annum above the base rate from time to time of RAIFFEISEN BANK of Riva San Vitale, Switzerland until payment is made in full. The Customer shall be required to make any payments due prior to delivery upon the Company issuing the respective invoice. The Company shall be entitled to withhold any delivery without any liability to the Customer until the Company has received the payments due in connection with such delivery. The Company reserves the right to request payment in advance. In the event of bankruptcy or insolvency of the Customer or in the event any proceeding is brought against Customer, the Company is entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges. All orders are accepted subject to the Customer being in a position to pay for them fully. If this condition is not met, such circumstances being considered to apply if unfavourable information is received regarding the Customer, immediate payment in cash may be required prior to delivery irrespective of the time allowed for payment. If it becomes known that there is a significant deterioration in the Customer's financial situation after the contract has been concluded, or if the Customer fails into arrears with a payment, the Company has the right to terminate the contract and require immediate settlement of any running account, including those not yet due. Should the Company make use of the right to terminate the contract, any profit lost or expenditure incurred by the Company in anticipation of the order, particularly in respect of work already executed, must be reimbursed by the Customer.

## 8. Risk and Ownership

Ownership of the Supplies shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due from the Customer to the Company on any account whatsoever. Until ownership passes to the Customer, the Customer must hold the Supplies on a fiduciary basis as the Company's bailee, and is only allowed to use the Supplies for evaluation or engineering purposes. In no case shall the Customer sell, lease or deliver to any third party any of the Supplies or any product incorporating any of the Supplies before the ownership is passed to the Customer. If payment is not received in full by the due date, or the Customer passes a resolution for winding up or a court shall make an order to that effect, or a receiver or administrator is appointed over any assets or the undertaking of the Customer or an execution or distress is levied against the Customer, the Company shall be entitled, without previous notice, to retake possession of the Supplies and for that purpose to enter upon any premises occupied or owned by the Customer. In case any action taken by the Customer results in the rescission or cancellation of the Contract between the Company and the Customer, the Company shall be entitled, without previous notice, to retake possession of all Supplies pertaining to that Contract. All payments occurred before the rescission or cancellation of the Contract will not be reimbursed. All developed Intellectual Property remains at all times the sole and exclusive property of the Company. The use of any intellectual property developed by the Company is regulated in the relative Contract.

## 9. Descriptions

All Descriptions, wherever they appear (including without limitation on proposals, technical specifications, data sheets or application notes) are intended to give a general idea of the Supplies, but will not form part of the Contract. The Company shall take all reasonable steps to ensure the accuracy of Descriptions but relies on such information, if any, as may have been provided to it by the Customer or the suppliers and accepts no liability in contract or tort or under statute or otherwise for any error in or omission from such Descriptions whether caused by the Company's negligence or otherwise.

## 10. Protection of Supplies and Intellectual Property

The customer shall protect the Intellectual Property of the Company embodied in its Supplies. In particular the Customer (a) shall NOT analyse, decompile, de-process or reverse engineer in any way any of the

Supplies, or allow any 3<sup>rd</sup> party to do so, (b) shall NOT resell or pass to a 3<sup>rd</sup> party any of the Supplies unless permanently installed (e.g. soldered) in a Customer's product, and (c) shall NOT use any knowledge acquired by using any of the Supplies to design or construct similar products, shall NOT pass such knowledge to any 3<sup>rd</sup> party that may use it to design or construct similar products, and shall NOT take any action that may result in a similar violation of the Company's Intellectual Property, unless agreed in written by a director of the Company. Customer shall indemnify the Company in full for any damages resulting from improper or inadequate protection of its Supplies or deliberate violation of these clauses.

#### **11. Partial Invalidity**

All of the aforementioned sales conditions will fully remain in effect even if individual provisions should be or become fully or partly invalid.

#### **12. Patents**

A Party shall not be liable for any costs or damages incurred by the other Party as a result of any suit or proceeding brought against it, and a Party will indemnify, defend and hold the other Party harmless from any expenses, damages or costs resulting from any suit or proceeding brought against it, either severally, or jointly with the first Party, so far as such suit or proceeding is based on claims (a) that use any Supplies or any part thereof furnished hereunder, in combination with products not supplied by the Company or (b) that a manufacturing or other process utilizing any Supplies, or any part thereof furnished hereunder, constitute either direct or contributory infringement of any patent of Customer's country of residence.

In case the Customer instructs the Company to design, implement or include in the Company's Supplies specific techniques, designs, circuits, etc., Customer shall indemnify, defend and hold the Company harmless against any expenses, damages or costs resulting from any suit or proceeding brought for infringement of patents or trademarks or unfair competition arising from compliance with such Customer's instructions.

Sale of Supplies or any parts thereof, hereunder confers on the Customer no license under any patent rights of the Company governing or relating to (a) the structure of any devices to which the Supplies or parts may be applied, or (b) a process or machine in connection with which they may be used.

NOTHING IN THESE TERMS AND CONDITIONS SHALL BE CONSTRUED AS A REPRESENTATION, WARRANTY OR GUARANTEE BY THE COMPANY (I) AS TO THE UTILITY, VALIDITY, SUBSISTENCE OR ENFORCEABILITY OF ANY INTELLECTUAL PROPERTY RIGHTS EMBODIED IN OR ASSOCIATED WITH THE SUPPLIES OF THE COMPANY, AND (II) THAT THE STANDARD PRODUCTS OR THEIR USE BY CUSTOMER OR OTHER PARTY WILL NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

#### **13. Warranties and Adjustments**

##### **13.1 Standard Products Warranty and Adjustments**

Standard products of the Company are warranted to meet the applicable specifications when tested to published specifications for a period of two (2) years from date of shipment. THE FOREGOING IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH OTHER WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITATION TO THE FOREGOING, NOTHING IN THESE TERMS AND CONDITIONS SHALL BE CONSTRUED AS A REPRESENTATION, WARRANTY OR GUARANTEE BY THE COMPANY (I) AS TO THE UTILITY, VALIDITY, SUBSISTENCE OR ENFORCEABILITY OF ANY INTELLECTUAL PROPERTY RIGHTS EMBODIED IN OR ASSOCIATED WITH THE PRODUCTS OF THE COMPANY AND (II) THAT THE PRODUCTS OR THEIR USE BY CUSTOMER OR ANY OTHER PARTY WILL NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. The liability of the Company under this warranty is limited solely – at its discretion – in replacing, repairing or issuing credit for such products that become defective or fail to meet the specifications during the schedule period, or prior to the date the Customer uses or resells such products, whichever date occurs sooner, provided that the Company will not be liable under this warranty unless (i) the Company is promptly notified in writing by Customer upon discovery of defects or failure to meet specifications, (ii) the defective unit is received by the Company for adjustment no later than two (2) months following the last day of the warranty period, and (iii) Company's examination of such unit shall disclose, to its satisfaction, that such defects or failure have not been caused by misuse or mishandling, not complying with the Company's instructions, neglect, improper installation, maintenance, storage or design-in, repair, alteration or accident. Any authorization for repairs or alteration must be in writing to prevent voiding the warranty. IN NO EVENT SHALL THE COMPANY BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS, LOSS OF USE OR DAMAGES OF ANY KIND BASED UPON A CLAIM FOR BREACH OF WARRANTY. This warranty excludes developmental products, which are covered by a separate warranty.

##### **13.2 Developmental Products Warranty**

Developmental products of the Company are warranted to be free from defects in materials and workmanship and to meet the applicable preliminary specifications upon receipt by Customer. THE FOREGOING IS IN LIEU OF ANY OTHER WARRANTY EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH OTHER WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITATION TO THE FOREGOING, NOTHING IN THESE TERMS AND CONDITIONS SHALL BE CONSTRUED AS A REPRESENTATION, WARRANTY OR GUARANTEE BY THE COMPANY (I) AS TO THE UTILITY, VALIDITY, SUBSISTENCE OR ENFORCEABILITY OF ANY INTELLECTUAL PROPERTY RIGHTS EMBODIED IN OR ASSOCIATED WITH THE DEVELOPMENTAL PRODUCTS OF THE COMPANY AND (II) THAT THE DEVELOPMENTAL PRODUCTS OR THEIR USE BY CUSTOMER OR ANY OTHER PARTY WILL NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. The liability of the Company under this warranty is limited solely – at its discretion – to replacing, repairing or issuing credit (which will be negotiated by both parties) for such products as are defective at the time they are received by Customer, provided that the Company will not be liable under this warranty unless (i) the Company is promptly notified in writing upon discovery of defects by Customer, (ii) the defective unit is returned to the Company for adjustment no later than two (2) months following the date on which such products are first shipped by the Company, and (iii) the Company's examination of such unit shall disclose, to its satisfaction, that such defects have not been caused by misuse or mishandling, not complying with the Company's instructions, neglect, improper installation, maintenance, storage or design-in, repair, alteration or accident. IN NO EVENT SHALL THE COMPANY BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS, LOSS OF USE, OR DAMAGES OF ANY KIND BASED UPON A CLAIM FOR BREACH OF WARRANTY.

Technical Advice: Company's warranties as herein above set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of, the Company's rendering of technical advice or service in connection with Customer's order or the products furnished hereunder.

#### **14. Limitation of Liability**

THE LIABILITY OF THE COMPANY AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS, INDEPENDENT CONTRACTORS AND SHAREHOLDERS FOR ANY DIRECT OR INDIRECT, FORESEEABLE OR UNFORESEEABLE, TYPICAL OR NON-TYPICAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, WHETHER DERIVED FROM TORTS (INCLUDING NEGLIGENCE), BREACHES OF CONTRACT, CULPA IN CONTRAHENDO, POSITIVE BREACH OF DUTY OR ANY OTHER LEGAL THEORY (COLLECTIVELY THE "DAMAGES") SHALL BE LIMITED TO REPAIRING OR REPLACING GOODS, RE-PERFORMING THE SERVICES OR, AT THE COMPANY'S OPTION, REFUNDING MONEY ALREADY PAID IN RESPECT OF THE SUPPLIES.

#### **15. Governing Law and Arbitration**

This Agreement and any disputes, claims or proceedings arising out of or in any way relating to this Agreement shall be governed by the laws of England and Wales. Except where urgent interlocutory relief is required, the Parties agree that any controversy, claim, dispute or misunderstanding arising out of or relating to this Agreement shall first be referred to one or more equal numbers of executive officers of the Parties. Such officers will meet and negotiate in good faith in an attempt to amicably resolve such controversy, claim, dispute or misunderstanding in writing. The English courts shall have exclusive jurisdiction for the purpose of any proceedings arising out of or in any way relating to this Agreement.

Rev. 3.3 – 21. March 2018. These conditions supersede all previous issues.