

# **RADIUS SYSTEMS LIMITED**

## **TERMS AND CONDITIONS OF SUPPLY**

### **1 INTERPRETATION**

#### **1.1 In these Conditions:**

Customer	means the company, firm, body or person buying the Goods and/or Services or whose order for the Goods and/or Services is accepted by the Supplier;
Conditions	means the terms and conditions set out in this document and includes any special terms and conditions agreed in Writing between the Customer and the Supplier. Any special terms and conditions shall prevail;
Contract	means the contract for the sale of the Goods and/or Services to be provided by the Supplier pursuant to the Contract together with any special terms and conditions agreed by the Supplier in Writing and notified on the Supplier's confirmation of order;
Force Majeure	means any cause beyond the reasonable control of the Supplier, including, without limitation, strikes, lock-outs or other industrial actions (whether or not relating to either party's workforce), failure of a utility service or transport network, acts of God, war (declared or undeclared), acts of terrorism, riots, insurrections, civil unrest, malicious damage, governmental actions, legal restrictions, accident, breakdown of plant or machinery, earthquake, fire, flood, storm, acts or omissions of third parties or default of suppliers or subcontractors, national emergency, epidemic, embargoes, blockades, and which results in the Supplier not being able to perform its obligations under this Contract;
Goods	means the goods, products and materials (including any instalment or any part of them) that the Supplier agrees to supply;
Incoterms	means the international rules for the interpretation of trade terms of the International Chamber of Commerce sales dated 2010;
Non-Standard Project	has the meaning in Condition 10;
Services	means the services the Supplier agrees to supply;
Supplier	means Radius Systems Limited (registered number 1585669) with its registered address at Radius House, Berristow Lane, South Normanton, Alfreton, Derbyshire, United Kingdom, DE55 2JJ;
Working Day	means a day when the banks are ordinarily open for business in the City of London; and
Writing	includes facsimile transmission (but not email) and other comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Any reference to any English legal concept or term shall, where relevant, be deemed to apply to the nearest analogous concept or term in any other jurisdiction.

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**2 BASIS OF THE SALE**

- 2.1 The Supplier shall sell the Goods and/or Services in accordance with any written quotation of the Supplier which is accepted by the Customer or written order of the Customer which is accepted by the Supplier, subject in either case to these Conditions.
- 2.2 These Conditions shall govern the Contract to the exclusion of all other terms and conditions, (including any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.4 These Conditions apply to all the Supplier's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Supplier. Nothing in this Condition will exclude or limit the Supplier's liability for fraud or fraudulent misrepresentation.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

**3 ORDERS AND SPECIFICATIONS**

- 3.1 No order submitted by the Customer is accepted by the Supplier unless confirmed in Writing by the Supplier's authorised representative or delivery of the Goods and/or Services by the Supplier.
- 3.2 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable technical and publicly available specifications) and for giving the Supplier any necessary information relating to the Goods and/or Services within a sufficient period to enable the Supplier to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods and/or Services, are those set out in the Supplier's quotation or the Customer's order, (to the extent accepted by the Supplier).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses incurred by the Supplier in connection with any claim in any jurisdiction for infringement of any patent, copyright, design, trade mark or other intellectual property rights.
- 3.5 The Supplier gives no warranty that any Goods based on the specification of the Customer will be fit for their intended purpose.
- 3.6 The Supplier may make any changes in the specification of the Goods and/or Services which are required to conform to any applicable statutory or EU requirements or which do not materially affect their quality or performance.
- 3.7 No order which has been accepted by the Supplier may be cancelled by the Customer, except with the agreement in Writing of the Supplier and on terms that the Customer indemnifies the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used and any fees of any professional adviser), damages, charges and expenses incurred by the Supplier as a result of cancellation.
- 3.8 All drawings, designs, specifications and other information provided by the Supplier are confidential and all rights of copyright ownership and other intellectual property rights in respect of them shall remain vested in the Supplier and shall not pass to the Customer unless agreed otherwise in Writing.

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**4 PRICE OF GOODS**

- 4.1 The price of the Goods and/or Services shall be the price specified on the Supplier's confirmation of order or, if none, the price specified in the Supplier's quotation or, if none, the Supplier's published price list current at the date of supply of the Goods and/or Services. All prices quoted are valid for 28 days only or until earlier acceptance by the Customer, or such other period as may be stipulated by the Supplier in any special terms and conditions notified to the Customer in Writing.
- 4.2 The Supplier may vary the price of the Goods and/or Services at any time before delivery to reflect any change in the cost to the Supplier which is due to any factor beyond the control of the Supplier, (including, without limitation, cost of inflation, foreign exchange fluctuation, currency regulation, increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods and/or Services), which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 4.3 Unless otherwise agreed in Writing by the Supplier, all prices are given by the Supplier on an ex works basis and exclude value added tax and other duties and taxes and the Customer shall be liable to pay those duties and taxes and the Supplier's charges for transport, packaging and insurance.
- 4.4 In the event of the Customer's breach of the Contract, the Supplier may sue the Customer for the price of the Goods, notwithstanding that title to them has not passed to the Customer.

**5 TERMS OF PAYMENT**

- 5.1 The Supplier may invoice the Customer at any time for the price of the Goods and/or Services or part of it or them and, without limitation, may invoice the Customer in respect of any instalment of an order. Unless the Supplier specifies otherwise, the Customer shall pay the invoice, (in full without any set off, deduction or counterclaim), within 30 days of the end of the calendar month in which the invoice is dated.
- 5.2 The time of payment of the price shall be of the essence of the Contract.
- 5.3 If the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Customer will be liable to pay interest to the Supplier on such sum from the due date for payment at the rate of eight percent per annum above the base rate from time to time of the Bank of England, accruing on a daily basis until payment is made in cleared funds, whether before or after any judgement.
- 5.4 The Supplier reserves the right to alter or withdraw at any time any credit allowed to the Customer.
- 5.5 If the Customer fails to make any payment by the due date or the Supplier has reasonable grounds for believing that the Customer will not make any payment by the due date, without prejudice to any other right or remedy available to the Supplier, the Supplier may cancel the Contract and/or suspend any further deliveries to the Customer.

**6. DELIVERY AND PERFORMANCE**

- 6.1 Unless otherwise agreed in Writing by the parties, delivery of the Goods shall be made by the Supplier "ex works" as that term is defined in Incoterms.
- 6.2 Any dates quoted for delivery of the Goods and/or Services are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods and/or Services.
- 6.3 If the Supplier fails to deliver the Goods or Services (or any instalment thereof) and the Supplier is liable under these Conditions, the Supplier's maximum liability to the Customer shall be the difference (if any) of the cost to the Customer of similar goods or services to replace those not delivered or performed over the agreed price of the Goods or Services.
- 6.4 If the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

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### TERMS AND CONDITIONS OF SUPPLY (continued)

- 6.4.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and redelivery and/or sell the Goods at the best price readily obtainable; and
- 6.4.2 (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 6.5 The Customer shall comply with all laws governing the importation of the Goods into the country of destination.
- 6.6 If the Customer resells, supplies, or otherwise transfers the Goods to any third party (an “End User”), the Customer shall ensure that all product information, instructions (including regulator-approved Instructions for Use), safety data sheets, warnings, specifications, and any other documentation or information provided by the Supplier in relation to the Goods (collectively, the “**Product Information**”) are accurately and promptly communicated to the End User in full and without modification.
- 6.7 The Customer shall not make any representations, warranties, or statements about the Goods that are inconsistent with the Product Information or with any instructions or guidelines provided by the Supplier.
- 6.8 The Supplier shall not be liable for any loss, damage, or claim arising from the Customer’s failure to transmit the Product Information to the End User or from any alteration or omission of such information. The Customer shall indemnify and hold the Supplier harmless from any such loss, damage, or claim.
- 6.9 The Supplier may from time to time provide updated Product Information. The Customer shall ensure that any such updates are provided to all End Users to whom the Goods are subsequently sold or distributed.

## 7 RISK AND PROPERTY

- 7.1 Risk of damage to, or loss of, the Goods shall pass to the Customer at the point of delivery or, if the Customer wrongfully fails to take delivery, at the date when the Supplier has tendered delivery of the Goods. The Customer shall insure the Goods accordingly.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds the payment in full for the price of the Goods and all other goods and services sold and/or agreed to be sold by the Supplier to the Customer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Supplier’s fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier’s property, and shall not be entitled to dispose of the Goods.
- 7.4 Until such time as the property in the Goods passes to the Customer, the Supplier may at any time require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, enter upon any premises of the Customer or of any third party where the Goods are stored and repossess the Goods.

## 8 WARRANTIES AND LIABILITY

### Warranties

- 8.1 Subject to the Conditions set out below, the Supplier warrants that the Goods will correspond with their specification at the time of delivery and will, unless otherwise agreed in Writing, be free from defects in material and workmanship for a period of 12 months from the date of delivery. The Supplier warrants that it shall perform the Services with reasonable skill and care.
- 8.2 The warranties set out in Condition 8.1 are given by the Supplier subject to the following Conditions:
  - 8.2.1 the Supplier shall be under no liability in respect of any defect arising from any drawing,

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design or specification supplied by the Customer; and

- 8.2.2 the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions, (whether oral or in Writing), misuse or alteration or repair of the Goods without the Supplier's approval; and
- 8.2.3 the warranties do not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer may only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Customer.
- 8.3 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Without limitation, the Supplier does not warrant the accuracy or otherwise of any design, drawing, specification, instructions, other information or advice that it provides as part of the Services and/or as ancillary information in relation to the Goods.
- 8.4 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified in Writing to the Supplier within 7 days of delivery or, (where the defect or failure was not apparent on reasonable inspection), within a reasonable time after discovery of the defect or failure but in any event, (unless otherwise agreed in Writing), within 12 months of delivery to the Customer.
- 8.5 Where any valid claim is made in accordance with this Condition 8, the Supplier may replace or repair the Goods (or the part in question) or re-supply the Services (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Goods or Services (or the part of the price in question).
- 8.6 Other than as set out in this Condition 8 the Supplier gives no other warranty or guarantee in respect of the Goods and/or Services. The Customer's sole remedy for any breach of warranty is set out in this Condition 8.

General Liability and Exclusion of Liability

- 8.7 Notwithstanding other terms of this Contract, a party to the Contract does not limit or exclude its liability for death or personal injury caused by its negligence or for fraud or fraudulent misrepresentation.
- 8.8 The Supplier shall supply Goods and/or Services to the Customer strictly on the basis that the Supplier shall not be liable to the Customer for loss of contracts, profits, anticipated savings, revenue, business, stoppage to other work or indirect or consequential loss (including, without limitation, loss of business, loss of reputation and loss of goodwill) (whether caused by the negligence of the Supplier, its employees or agents or otherwise) in connection with this Contract.
- 8.9 Notwithstanding any other provision in the Contract, the entire liability of the Supplier under or in connection with the Contract (whether in contract, tort, negligence or otherwise) shall not exceed the sum paid to the Supplier by the Customer for the Goods or the Services, (or both, where both Goods and Services are to be supplied), which are the subject of the claim in question by the Customer.
- 8.10 The Supplier shall not be liable for any breach of its obligations to the extent that the Supplier is prevented or hindered from complying with them by an event of Force Majeure.

**9 EVENTS OF DEFAULT**

- 9.1 Without prejudice to any other right or remedy available to the Supplier, the Supplier may cancel the Contract or suspend any further deliveries without any liability to the Customer, if :
  - 9.1.1 the Customer becomes insolvent or bankrupt or goes into liquidation, receivership or administration or is wound up or enters into a composition or arrangement with its creditors;
  - 9.1.2 the Customer is unable to pay its debts, makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation; or

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- 9.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
  - 9.1.4 the Customer ceases, or threatens to cease, to carry on business; or
  - 9.1.5 the Supplier reasonably believes that any of the foregoing events is about to occur in relation to the Customer and notifies the Customer accordingly; or
  - 9.1.6 in relation to Conditions 9.1.1 to 9.1.4, the Customer suffers any similar or analogous event in any jurisdiction; or
  - 9.1.7 the Customer encumbers or in any way charges any of the Goods.
- 9.2 If the Goods and/or Services have been delivered but not paid for and the Supplier cancels the Contract under Condition 5.2 and/or Condition 9, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 10 NON-STANDARD PROJECTS

- 10.1 Where the Customer orders Goods and/or Services of a type, size or quality not ordinarily produced/performed by the Supplier, such order will be deemed a "Non-Standard Project". The Supplier's sole obligation is to use reasonable endeavours to deliver such Non-Standard Project. Without prejudice to any other provision of this Contract limiting the Supplier's liability, if, in the Supplier's absolute discretion, it proves impossible, impracticable or uneconomical to carry out the whole or part of the Non-Standard Project, the Supplier may on reasonable notice terminate the whole or part of the Contract for the Non-Standard Project without liability. In such circumstance the Customer shall only be liable to pay for that part of the Non-Standard Project delivered and/or performed.

## 11 EXPORT SALES

- 11.1 Subject to Condition 6.1, where Goods are sold on the basis of international trade terms, such trade terms shall be defined in accordance with Incoterms.
- 11.2 Where Goods are sold FOB, the Supplier shall not be required to give the Customer the notice specified in Section 32(3) of the Sale of Goods Act 1979.
- 11.3 Unless otherwise agreed by the Supplier in Writing, the price of the Goods and/or Services to be exported from the United Kingdom shall be secured by an irrevocable letter of credit satisfactory to the Supplier and established by the Customer in favour of the Supplier immediately upon receipt of the Supplier's confirmation of order and confirmed by a United Kingdom bank acceptable to the Supplier. The letter of credit shall be for the price payable plus any and all duties and taxes payable to the Supplier and shall be valid for the longer of six (6) months or any period estimated by the Supplier for delivery of the Goods and/or Services.
- 11.4 The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with these Conditions or a Contract that fall under the scope of The Russia (Sanctions) (EU Exit) Regulations 2019 ("**Sanctioned Goods**").
- 11.5 The Customer shall use all reasonable endeavours to ensure that the purpose of Condition 11.4 is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 11.6 The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Condition 11.4.
- 11.7 Any breach of Condition 11.4, 11.5 or 11.6 shall constitute a material breach of these Conditions or a Contract, and the Supplier shall be entitled to seek appropriate remedies, including, but not limited to termination of a Contract.
- 11.8 The Customer shall immediately inform the Supplier about any problems in applying Conditions 11.4, 11.5 or 11.6, including any relevant activities by third parties that could frustrate the purpose of

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Condition 11.4. The Customer shall make available to the Supplier information concerning compliance with the obligations under Conditions 11.4, 11.5 and 11.6 within two weeks of the simple request of such information.

- 11.9 Where the Supplier has reason to believe that any Sanctioned Goods have been sold, exported or re-exported directly into the Russian Federation the Supplier shall have the right to notify the Office of Financial Sanctions Implementation irrespective of any confidentiality agreement between the parties.

**12 PACKING**

- 12.1 Unless otherwise agreed in Writing by the parties, the price specified by the Supplier excludes the cost of packing cases and packing materials, for which the Customer shall be liable in addition to the price. If the Supplier notifies the Customer that packing cases and/or materials are returnable, then the full cost of these is payable by the Customer if the Customer does not return them in good condition to the Supplier either (at the Supplier's option) carriage paid or in the Supplier's vehicle within three (3) months of their delivery to the Customer. Where not returnable, the Customer will dispose of all packing in accordance with applicable regulations, (whether statutory or otherwise).
- 12.2 The Supplier shall use reasonable endeavours to ensure, where necessary, the appropriateness of packing before despatch, but the Supplier shall not be liable for any damage to or loss of Goods between despatch from the Supplier and delivery in accordance with this Contract.

**13 CONFIDENTIALITY**

- 13.1 Each party to the Contract shall keep strictly confidential all information concerning the business and affairs of the other obtained from the other either pursuant to the Contract or in contemplation of it, shall use the same exclusively for the purposes of the Contract, and shall disclose the same only to those of its directors, shareholders, employees agents and consultants to whom and to the extent that such disclosure is reasonably necessary for the purposes of the Contract (or, in respect of the Supplier, is required for disclosure for its business purposes).
- 13.2 The obligations of Condition 13.1 above shall survive expiry or termination of the Contract but shall not apply to any information which:
- 13.2.1 the recipient can demonstrate was already in its possession and at its free disposal prior to receipt under the circumstances mentioned at Condition 13.1 above;
  - 13.2.2 is subsequently disclosed to the recipient without any obligation of confidence by a third party who has not derived it directly or indirectly from the disclosing party;
  - 13.2.3 enters the public domain through no act or default of the recipient, its agents or employees; or is required by law to be disclosed.

**14 GENERAL**

- 14.1 The Supplier may perform any of its obligations or exercise any of its rights under this Contract through any other member of its group of companies.
- 14.2 The Customer may not assign any of its rights or obligations or mortgage, charge (otherwise than by floating charge) any of its rights under this Contract without the prior written consent of the Supplier. The Supplier may assign the Contract and/or its rights and obligations under it without the consent of the Customer.
- 14.3 Each party acknowledges that, in entering into this Contract, it does not do so on the basis of and does not rely on any representation, warranty or other provision except as expressly provided in this Contract and all conditions, warranties or other terms implied by statute or common law are excluded. This Condition shall only apply to the extent permitted by law.
- 14.4 Any notice given or made under or in connection with the Contract will be in Writing and given to the Company Secretary of the relevant party, either personally, by prepaid first class post (or registered carrier if the address for service is outside the United Kingdom) or facsimile. Notices will be deemed to have been duly given or made:

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- 14.4.1 if delivered by hand, upon delivery at the registered office address of the relevant party;
- 14.4.2 if sent by prepaid first class post, 2 Working Days after posting (or if sent by registered carrier if the address for service is outside the United Kingdom, 5 Working Days after posting);
- 14.4.3 if sent by facsimile, at the time of transmission, (provided a confirmatory letter is sent by prepaid first class post or registered carrier if the address for service is outside the United Kingdom); or
- 14.5 No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.6 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 14.7 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **15 GOVERNING LAW AND DISPUTES**

- 15.1 The Contract shall be governed by and construed in accordance with the laws of England and Wales, and the Customer agrees to submit to the exclusive jurisdiction of the English courts.
- 15.2 In the event of any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, the parties shall attempt to resolve such dispute in good faith and without recourse to legal proceedings.
- 15.3 If the parties are unable to resolve such dispute after the expiry of 10 Working Days from the date on which discussions between the parties began, either party may request to the other in Writing that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall attempt to resolve the dispute within 10 Working Days of the written request to do so.
- 15.4 If the dispute is not resolved by the senior representatives of the parties pursuant to Condition 15.3 within the prescribed time period set out in that Condition, the matter shall be referred to, and finally resolved by, court proceedings.