



## **Excelsys Technologies Ltd. (Seller)**

**27 Eastgate Drive  
Eastgate Business Park  
Little Island  
Co. Cork, Ireland**

# **TERMS AND CONDITIONS OF SALE**

### **1. ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS**

The Buyer agrees to be bound by the Seller's Terms and Conditions of Sale contained herein. Seller will not be bound by any of Buyer's terms and conditions, regardless of whether Buyer tenders to Seller a paper form containing Buyer's terms and conditions, whether Buyer sends its terms and conditions to Seller electronically via e-mail or any similar electronic medium, or whether Buyer tenders its terms and conditions to Seller by any other means.

### **2. PAYMENT**

You (the Buyer) shall make all payments in the currency stated on the Seller's Order Acknowledgement. If you have established credit with Seller, payment is due within 30 days from date of Seller's invoice to you. All other payment terms must be approved by Seller in writing in advance of order shipment.

For Buyers for whom credit is not established and approved by Seller, please include payment with your order through banker's draft or through an approved credit card. You agree that any credit card information supplied is true, correct and complete, that charges incurred by you will be honoured by your credit card company and that you will pay charges incurred by you at the rates in effect at the time incurred, including all applicable taxes. If in Seller's judgment, your financial condition at any time does not justify the terms of payment specified, Seller reserves the right to require full payment in cash before order entry, manufacture, shipment, or delivery. In the event you default in payment, you shall be liable for all collection costs incurred by Seller including, but not limited to, attorney and collection agency fees, and all related disbursements. In the event you do not pay when payment is due, past due amounts are subject to service charges of 1.5% per month or the maximum percentage rate permitted by law, if lower. The price is payable on the terms of this Agreement without deduction, set-offs, counterclaims, back-charges, or any other charges or claims by you of any nature, and your obligations to Seller shall remain unimpaired regardless of disputes which may arise between you and third parties.

### **3. PAYMENT OF FREIGHT, TRANSPORTATION, TAXES, AND OTHER GOVERNMENTAL CHARGES**

The prices shown do not include any present or future freight charges and transportation and delivery costs, if applicable, nor do they include transportation taxes and sales, use, excise, or other taxes or charges payable to any governmental authorities. Any such taxes or charges now or hereafter imposed with respect to sales or shipments under these terms and conditions will be deemed extra charges and will be paid by you, or in lieu thereof in the case of taxes, you shall provide Seller with a tax exemption certificate acceptable to applicable taxing authorities. If, for any reason, such certificate is not accepted by such authorities or such acceptance is revoked, you shall indemnify and hold Seller harmless as provided in Section 10 hereof. Whenever applicable, such tax or taxes or other governmental charges will be added to the invoice as a separate charge to be paid by you. You shall secure all licenses and permits at your own expense unless Seller assumes the responsibility in writing.

### **4. SHIPMENT OF GOODS**

Shipment of Goods will be made EX-Works Seller's designated shipping location (INCOTERMS 2010). All other shipping terms must be approved by Seller in writing.

Any shipping dates given in advance of actual shipment are estimated and deliveries will be made subject to prior orders on file with Seller. Seller shall not be liable for any failure to perform or any delay in performance due to any cause beyond Seller's reasonable control, including but not limited to: fire, flood, strike, other labor difficulty, act of God, act of governmental authority or of you, transportation difficulties, delays in usual sources of supply, and/or major changes in economic conditions. In the event of delay in performance due to any such cause, the date of delivery or shipment will be extended by a period of time reasonably necessary to overcome the effect of such delay. In no event shall Seller be liable to Buyer for any loss or damage sustained by the Buyer in consequence of failure to deliver.

You shall pay all insurance costs associated with delivery, and you shall be responsible for filing and pursuing claims with carriers for loss or damage in transit, unless Seller assumes these obligations in writing.

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You are responsible for obtaining all necessary transportation licenses and permits, at your expense, unless Seller assumes this responsibility in writing.

#### **5. TITLE, RISK AND PROPERTY**

Risk of damage to or loss of the Goods shall pass to the Buyer when the Goods are delivered at the Buyer's premises or are available for delivery to or collection by the Buyer and the Buyer shall keep the Goods fully insured until title has passed. 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 Buyer until the Buyer has paid all sums due to the Seller (a) in respect of the Goods, (b) on any other account and (c) in respect of interest payable under section 2 or otherwise and where the Seller has received cleared funds in relation to same. If any Goods are processed into, incorporated in, used as materials or mixed with other goods or materials prior to such payment, the property (but not the risk) in the whole of such goods or materials shall pass to the Seller at the moment of such processing, incorporation, use or admixture and shall remain with the Seller until payment of the monies specified herein and such goods or materials shall be deemed to constitute "Goods" for the purposes of the remainder of this section. The Buyer shall hold all Goods which remain the Seller's property under this section as bailee for the Seller and shall store them separately from any similar goods of the Buyer or any other person in such a way that they remain identifiable as the Seller's property. The Buyer shall not sell, dispose or part with possession of any Goods until title has passed to the Buyer.

If notwithstanding that title has not passed to the Buyer and payment has not been made, and notwithstanding the above, the Buyer resells the Goods, the Buyer will hold the proceeds of any such resale as trustee for the Seller in a fiduciary capacity to the extent of the Buyer's liability to the Seller and shall keep them in a separate account. Until payment of all sums specified, the Seller shall have the right to recover and resell any of the Goods. For this purpose, the Buyer hereby grants the Seller, its agents and employees an irrevocable right and licence at any time to enter any vehicles or premises where the Goods are stored with or without vehicles in order to inspect them or to recover them. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights the Seller may have thereunder or otherwise.

The Buyer's right to possession shall cease forthwith in the following events:- (i). the Buyer has not paid all amounts due to the Seller on any account whatsoever; (ii). the Buyer is declared bankrupt or makes any proposal to its creditors for composition or other voluntary arrangement with its creditors or does or fails to do anything which would entitle a petition for winding-up or a bankruptcy order to be presented; (iii). a receiver, examiner or liquidator is appointed in respect of the business of the Buyer; (iv) the Buyer does or fails to do anything which would entitle any person to appoint a receiver to the whole or part of the Buyer's assets or would entitle any person to present a petition for the administration of the Buyer or a resolution is passed for the winding-up of the Buyer; (v) a judgment against the Buyer remains unsatisfied; (vi) the Buyer is unable to pay a debt to a third party as it falls due and/or is deemed to be insolvent; (vii) any distress or execution is levied against any of the Buyer's assets.

All mitigation/recovery activities by the Seller including the Seller's exercise of its rights under this section shall be without prejudice to its other rights under this contract, including, without limitation, the right to compensation for any profits lost as a result of the Buyer's breach of contract. In the event of any of the occurrences referred to above arising, all sums due to the Seller from the Buyer shall become immediately due and payable without deduction, set-off or counterclaim.

#### **6. WARRANTY**

Seller warrants that for a period of Two (2) years, or if higher the explicit Warranty period specified on the Excelsys Website for that particular product, all goods will substantially conform to the specifications prepared, approved, and issued by Seller's headquarters (the "Specifications"), unless otherwise stated, subject to commercial tolerances and except as provided in Section 8 below. In recognition of the time delay between the date of manufacture and the date of usage of a product the warranty period will be deemed to commence 180 days after the manufacturing date as evidenced by the manufacturing date code stamped on the product.

#### **7. THE BUYER'S EXCLUSIVE REMEDY IS THE REPAIR OR REPLACEMENT OF ANY GOODS SOLD OR A REFUND OF THE PURCHASE PRICE**

The buyer's **EXCLUSIVE** remedy against Seller arising out of any breach of these terms and conditions is the repair or replacement of the nonconforming Goods sold to you under these terms and conditions, or alternatively, at Seller's election, a refund of the portion of the purchase price allocable to the nonconforming Goods. Replacement Goods may be new or reconditioned. Seller shall not be liable to you for the cost of removal and/or reinstallation of such Goods or for any other direct, indirect, special, incidental, punitive, or consequential damages resulting from the breach of these terms and conditions, or for any other reason. Seller's liability shall in no event exceed the purchase price of such Goods.

#### **8. LIMITATIONS OF WARRANTY; LIMITATION ON DAMAGES**

SELLER'S WARRANTY AS TO CONFORMITY TO THE SPECIFICATIONS IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. NO PROMISE OR AFFIRMATION OF FACT MADE BY ANY EMPLOYEE, AGENT, OR REPRESENTATIVE OF SELLER, NOR ANY SAMPLE PROVIDED TO YOU, SHALL CONSTITUTE A WARRANTY OR GIVE RISE TO ANY LIABILITY OR OBLIGATION.

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UNLESS OTHERWISE AGREED BY SELLER IN WRITING, SUCH WARRANTY AS TO CONFORMITY TO SPECIFICATIONS RUNS ONLY TO YOU AND IS NONTRANSFERABLE AND NON-ASSIGNABLE EITHER DIRECTLY, INDIRECTLY, OR BY OPERATION OF LAW, AND ANY SUCH PURPORTED OR ATTEMPTED TRANSFER OR ASSIGNMENT SHALL BE NULL AND VOID. You and your employees, agents, and representatives shall not claim, represent, imply, or permit its purchasers, distributors, processors, or others to claim, represent, or imply that such warranty extends or is available to third parties and shall, in addition to the indemnification provisions of Section 10, indemnify and save Seller harmless from all claims and actions of third parties irrespective of whether such claims or actions are based upon contract, tort, negligence, strict liability, contribution, indemnity, infringement, statute, or otherwise. To the limit of its legal right to do so, you shall cause any third party to cease and desist any such representation.

SELLER SHALL HAVE NO LIABILITY WITH RESPECT TO GOODS EXCEPT FOR BREACH OF ITS WARRANTY OF CONFORMITY TO THE SPECIFICATIONS. YOUR SOLE REMEDY FOR BREACH OF WARRANTY SHALL BE STRICTLY AND EXCLUSIVELY LIMITED TO THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS OR, AT SELLER'S OPTION, TO A REFUND OF THE PORTION OF THE PURCHASE PRICE ALLOCABLE TO SUCH NONCONFORMING GOODS. IN NO EVENT SHALL SELLER BEAR THE COSTS OF REMOVAL AND/OR REINSTALLATION OF NONCONFORMING GOODS. IN NO EVENT SHALL THE LIABILITY OF SELLER EXCEED THE PURCHASE PRICE OF THE GOODS. THE LIMITATIONS ON REMEDIES SET FORTH IN THIS SECTION AND IN SECTION 7 SHALL APPLY ALSO TO ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THE GOODS OR THE AGREEMENT THAT A COURT OR ARBITRATOR MAY FIND TO HAVE ARISEN OTHER THAN UNDER THE EXPRESS WARRANTY SET FORTH ABOVE, INCLUDING ANY ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, CONTRIBUTION, INDEMNITY, INFRINGEMENT, STATUTE, OR OTHERWISE.

IN NO EVENT SHALL SELLER BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PUNITIVE, OR OTHER DAMAGES IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, CONTRIBUTION, INDEMNITY, INFRINGEMENT, STATUTE, OR OTHERWISE.

The foregoing, together with Sections 7 and 9, constitutes a final expression by Seller of its warranty. Such warranty cannot be modified or supplemented unless modified or supplemented in writing by Seller.

#### **9. TIME LIMITATION FOR BRINGING CLAIMS**

You must notify Seller in writing concerning the nonconformity of Goods as soon as practicable, but in no event later than 10 days after you discover or should have discovered such nonconformity, subject, however, to the express period of warranty set forth in Section 6. Your written notice must set forth with particularity the nature and extent of the nonconformity complained of. All claims for shortages must be made in writing within 10 days after receipt of Goods by you or your agent and specify with particularity the exact shortage complained of. Immediate written notice must be given to the carrier's agent at destination in the event of damage or loss in transit.

In no event shall Seller be responsible for claims resulting in whole or in part, directly or indirectly, from the use or abuse of nonconforming Goods or for the costs of labor and/or materials expended on any such Goods. Failure to furnish a written claim within the applicable time period shall terminate all liability of Seller. Seller must be given the opportunity upon written demand to inspect Goods claimed to be nonconforming. You shall return Goods which do not conform to Seller upon receipt of Seller's authorisation to do so and at Seller's expense. You must demonstrate to the reasonable satisfaction of Seller that any alleged nonconformity of Goods was solely caused by a breach by Seller of the express warranty as to the conformity to the Specifications. You shall not, under any circumstances, exercise set-off against outstanding or subsequent invoices of Seller without Seller's written consent for any claim.

#### **10. YOU WILL INDEMNIFY SELLER AGAINST ALL LOSS**

You agree to indemnify, defend, and hold Seller and its affiliated business units, and their respective officers, directors, owners, agents, information providers, and licensors (collectively, the "Seller Parties") harmless with respect to: (a) all demands, claims, actions, or judgments of a third party against any Seller Party, directly or indirectly, for any consequential, material, special, liquidated, punitive, or other damages, regardless of whether such demand, claim, action, or judgment is based on theories of contract, tort, negligence, strict liability, warranty, indemnity, contribution, statute, or otherwise, including without limitation, all demands, claims, actions, and judgments relating to injury and/or death of any and all persons and for loss of and/or damage to property arising from use, handling, repair, adjustment, operation, modification, or conversion of Goods; and (b) all demands, claims, actions, or judgments of a third party against any Seller Party, directly or indirectly, based on a theory of infringement or violation of patents, trademarks, trade names, trade secrets, copyrights, or the like when such demand, claim, action, or judgment is based in whole or in part directly or indirectly, on Seller's compliance with specifications provided by you.

Your indemnification obligation applies whether you alone were negligent; whether a Seller Party alone was negligent; whether any third party alone was negligent; whether you, a Seller Party, or a third-party were negligent in any combination, whether jointly or concurrently; or whether neither a Seller Party, nor you, nor any third party was negligent. This indemnification obligation requires you to pay any judgments against a Seller Party, any court costs that may be assessed against a Seller Party, and any reasonable attorneys fees and disbursements incurred by a Seller Party in Seller's defense. You have no right to control Seller's defense of any claim brought against a Seller Party. Your indemnification obligation does not depend on the truth of any allegations made against the Seller Party, you, or any third-

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party. While you are not required to indemnify any Seller Party against Seller's intentional acts of tort, you must continue to pay the Seller party's court costs and reasonable attorneys fees and disbursements until it has been established that the loss in question was caused solely by intentional acts of tort of the Seller Party.

#### **11. CHANGES, TERMINATION, OR CANCELLATION**

Orders arising hereunder may be amended by written change order signed by the parties, if and only if specifically agreed to in writing by the Seller, setting forth the particular changes to be made and the effect of such changes on the price and time of delivery. A charge will be made for changes in drawings and/or specifications after Buyer and Seller have previously agreed upon same. The total charge for such change will include order reprocessing costs, additional material and labor costs.

Seller will advise the total charge for such changes after receipt of written authorisation or direction for such changes. In the event the changes are required as a result of an error on the part of the Seller no charge will be made. Order specifications and/or drawings for Seller's goods may not be changed within fourteen (14) calendar days of previously acknowledged shipping date. Orders for goods received by Seller are accepted subject to the understanding that orders may be cancelled by Seller because of Seller's inability to obtain all or part of the materials necessary to complete the order at prices in effect on the date hereof or by reason of other causes beyond its reasonable control.

All claims must be made in writing and delivered to Seller within ten (10) working days after receipt of the goods and must be accompanied by Seller's packing list and freight bill of lading. Failure of Buyer to make such claims within ten (10) days will constitute a waiver by Buyer of such claims.

#### **12. SUITABILITY**

Seller's Goods are designed to meet stated international safety standards and regulations. Because local safety standards and regulations vary significantly, Seller cannot guarantee that the Goods meet all applicable requirements in each locality. You assume responsibility for compliance with such safety standards and regulations in those localities in which the Goods will be shipped, sold and used. Before purchase and use of Goods, please review the application, and relevant national and local codes and regulations, and be sure that the Goods, installation, and use will comply with them.

#### **13. SALES**

Due to international regulations and product availability, not all Goods may be available in every area.

#### **14. EXPORT CONTROLS AND COMPLIANCE WITH LAWS**

Buyer acknowledges that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin. Buyer will not export or re-export the Products or any related technical documentation in any form in violation of the export or import laws of the United States or any foreign jurisdiction. Buyer shall not, without U.S. government authorization, export, re-export, or transfer any goods, software, or technology subject to these Terms, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, North Korea, Sudan, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. In addition, any software or any technology subject to these Terms may not be exported, re-exported, or transferred to an end-user engaged in activities related to weapons of mass destruction. Further, Buyer and its personnel, agents and representatives are aware of, and agree to abide by, the obligations imposed by the laws of the countries in which Buyer does business (including, without limitation, the Foreign Corrupt Practices Act) dealing with payments or gifts to governments or related persons for the purpose of obtaining or retaining business for or with, or directing business to, any person. Accordingly, Buyer agrees that no portion of monies paid or payable to Buyer in connection with this Agreement, nor any other item of value, will, directly or indirectly, be paid, received, transferred, loaned, offered, promised or furnished to or for the use of any officer or employee of any government department, agency, instrumentality or corporation thereof, or any political party or any official of such party or candidate for office, or any person acting for or on behalf of any of the foregoing, for the purpose of obtaining or retaining business for or with, or directing business to, any person. Buyer will comply with the applicable provisions of 42 USC § 1320a-7b prohibiting illegal remuneration (including kickback, bribe or rebate). Buyer will defend, indemnify, and hold harmless Seller from and against any violation of such laws or regulations by Buyer or any of its agents, officers, directors, or employees.

#### **15. INTERPRETATION OF THIS AGREEMENT**

##### **A. NO ORAL MODIFICATION**

None of Seller's employees or agents has any authority to orally modify or alter in any way these terms and conditions.

##### **B. PRIOR COURSE OF DEALINGS IRRELEVANT**

Regardless of how many times you have purchased goods or services from Seller by any means, each time you place an order with the Seller, you agree that you are entering a separate agreement that shall be interpreted without reference to any other agreement between you and Seller, or what you may claim to be a course of dealing that has arisen between you and Seller.

##### **C. A USAGE OF TRADE SHALL NOT VARY TERMS AND CONDITIONS**

No usage of trade shall vary any of these terms and conditions.

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**D. NO PRIOR OR CONTEMPORANEOUS AGREEMENTS**

There are no prior or contemporaneous agreements, representations, warranties, or understandings that affect these terms and conditions in any way.

**16. YOUR AUTHORITY AND CAPACITY**

You represent and warrant that you have both the authority and the capacity to purchase Goods under these terms and conditions and, if applicable, to bind your employer and/or principal.

**17. GOVERNING LAW**

This agreement between you and Seller will be governed by the law of Ireland, excluding the United Nations Convention on Contracts for the International Sale of Goods. If you bring a lawsuit against Seller arising out of or relating to these terms and conditions, you must file your lawsuit in a court located in Ireland. You expressly submit to the exclusive jurisdiction of said courts and you consent to extra-territorial service of process on you.

**18. NO WAIVER OF SELLER'S RIGHTS UNDER APPLICABLE LAW**

Nothing contained in these terms and conditions shall be construed to limit or waive any rights of Seller under applicable international laws. Failure by Seller to enforce any of these terms, conditions, and limitations shall not constitute a waiver of them, and the failure of Seller to exercise any rights arising from your default or otherwise shall not constitute a waiver of such right or any other right. These terms, conditions, and limitations may be enforced and the rights of Seller enforced at any time in whole or in part.

**19. SEVERABILITY**

Should any part of these terms and conditions be held invalid or unenforceable, that portion shall be construed consistent with Irish law, and the remaining portions – be they entire sections, paragraphs within sections, sentences, or portions of sentences – shall remain in full force and effect. The term “Section” as used in these terms and conditions refers to the entire text contained below a bolded heading. For example, all the text under the words “19. SEVERABILITY” constitutes a “Section.”