

Conditions of Sale of Coda Octopus Products Limited (September 2014)

These are the standard terms and conditions under which our companies (the Companies Defined herein) sell its Products and/or services and apply to all sales of its Products and services unless expressly agreed otherwise in writing by the Company.

1. Definitions

The definition and rules of interpretation in this provision apply to these Conditions.

"Buyer": the person, firm or company who purchases the Product (s) from the Seller.
"Condition" or "Conditions" (as the context requires): the terms and conditions which govern the sale and supply of the Products and services by the Buyer and which are set forth in this document including the End User License (where we include any software products with the items sold).
"Contract": these terms and conditions of sale including our quotation, End User License and any other document expressly incorporated by reference by the Seller.
"End User License": the terms and conditions which govern the use of our software products including associated media, printed materials and other components and software modules.
"Order": the Buyer's purchase order accepting the Seller's quotation and to which these Conditions apply.
"Products": the product(s) supplied to the Buyer by the Seller pursuant to the terms of this Contract including hardware, software and associated equipment that may be supplied by the Seller.
"Seller" or "Company": The Company furnishing the quotation and which shall be one of the Group Companies listed herein: Coda Octopus Products Limited (place of business Edinburgh); Coda Octopus Products, Inc. (place of business Lakeland, Florida); Coda Octopus Products Pty Limited (place of business Perth, Australia); Coda Octopus R&D Limited (place of business Edinburgh) or Coda Octopus R&D AS (place of business Bergen, Norway) and all together referred to as "Coda Octopus" or "Group Companies".

The headings in these Conditions are for convenience only and shall not affect their construction or interpretation.

2. Application of Terms

2.1. Subject to any variation under Condition 2.3, the Contract shall be on these Conditions to the exclusion of all other terms and conditions. The Contract specifically excludes any terms and/or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document issued to the Seller by the Buyer.
2.2. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract with the Company simply as a result of such document being referred to in the Contract.
2.3. These Conditions apply to all the Company's sales and 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 the Company.
2.4. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
2.5. Each order or acceptance of a quotation for Products by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Products and/or services on these Conditions.
2.6. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
2.7. Any quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgement (in writing) of order to the Buyer and prior to such time the Company reserves the right to withdraw or amend any quotation prior to such acknowledgement.
2.8. Price lists, catalogues and any other promotional material supplied by the Company do not constitute contractual offers capable of acceptance. Prices shown in any such materials may be subject to change at any time prior to the entry by the Company and the Buyer into a binding Agreement.

3. Description

3.1. The quantity and description of the Products shall be as is set out in the Company's quotation or acknowledgement of order.
3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or demonstrations are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and this is not a sale by sample.
3.3. The Seller reserves the right to make any changes in the specification of the Products which are required to conform to statutory or international requirements. The Seller reserves the right to add to or delete from its range or to change the Products without notice to the Buyer.

4. Limitation of Liability

4.1. Subject to Condition 5 ("Quality and Warranty"), the following provisions set out the entire financial liability of the Company to the Buyer in respect of: (a) any breach of these Conditions; (b) any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
4.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.
4.3. Nothing in these Conditions excludes or limits the liability of the Company: (a) for death or personal injury caused by the Company's negligence; or (b) under section 2(3),

Consumer Protection Act 1987; or (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or (d) for fraud or fraudulent misrepresentation.

Subject to Conditions 4.2 and 4.3: (i) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and (b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or in each case whether direct, indirect or consequential, or any claims for consequential losses or damages whatsoever (howsoever caused) which arise out of or in connection with the Contract.

5. Quality and Warranty

5.1. The Seller warrants that (subject to the other provisions of these Conditions) on delivery and for a period of 12 months from the date of delivery, the Products shall be of satisfactory quality and reasonably fit for purpose.
5.2. The Company shall not be liable for a breach of any of the warranties in Condition 5.1 unless: (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and the Company is given a reasonable opportunity after receiving the notice of examining such Products and the Buyer (if asked to do so by the Company) returns such Products to the Company's place of business at the Company's cost for the examination to take place there.
5.3. The Company shall not be liable for a breach of any of the warranties in condition 5.1 if: (i) the Buyer makes any further use of such Products after giving such notice; or (ii) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or (iii) the Buyer alters or repairs such Products without the written consent of the Company.
5.4. Subject to Conditions 5.2. and 5.3, if any of the Products do not conform with any of the warranties in Condition 5.1, the Company shall at its option repair or replace such Products (or the defective part) or refund the price of such Products at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Products or the part of such Products which is defective to the Company.
5.5. If the Company complies with Condition 5.4, it shall have no further liability for a breach of any of the warranties in Condition 5.1 in respect of such Products.
5.6. Any Products replaced shall belong to the Company and any repaired or replacement Products shall benefit from the warranties provided herein and shall extend to the unexpired portion of the 12 month period.

6. Price

6.1. All quotations and estimates of the purchase price for the Products are exclusive of VAT and all costs or charges in relation to packaging, loading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Products.

7. Payment

7.1. Payment for the Products supplied under the Contract shall be payable in accordance with these Conditions. Unless otherwise specified in the quotation, payment shall be prior to delivery of the Products.
7.2. Time for payment shall be of the essence.
7.3. If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled:
(i) to charge interest on the outstanding amount at the rate of 4% per annum above the base lending rate from time to time of the bank notified in writing and accruing on a daily basis until payment in full is made of the appropriate payment;
(ii) to require payment in advance of delivery of undelivered Products;
(iii) to refuse to make delivery of any undelivered Products whether ordered under the Contract or not and without incurring any liability whatever to the Buyer for non delivery or any delay in delivery;
(iv) to terminate the Contract;
(v) to appropriate any payment made by the Buyer to such of the Products as the Seller may think fit.
(vi) The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counter-claim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8. Delivery

8.1. Unless otherwise stated in the quotation terms, delivery of the Products shall take place at the Company's place of business.
8.2. Any dates specified by the Company for delivery of the Products in its quotation or elsewhere are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
8.3. Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days without the consent of the Buyer.
8.4. If for any reason the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisations: (a) risk in the Products shall pass to the Buyer (including for loss or damage caused by the Company's negligence); (b) the Products shall be deemed to have been delivered; and (c) the Company may store the Products until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

8.5. The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Products.

8.6. If the Company delivers to the Buyer a quantity of Products of up to 75% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for such Products at the pro rata Contract rate.

9. Risk and Title

9.1. The Products are at the risk of the Buyer from the time of delivery.

9.2. Ownership of the Products shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of (a) the Products; and (b) all other sums which are or which become due to the Company from the Buyer on any account.

9.3. Until ownership of the Products has passed to the Buyer, the Buyer shall (a) hold the Products on a fiduciary basis as the Company's bailer; (b) store the Products (at no cost to the Company) separately from all other Products of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and (d) maintain the Products in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

9.4. The Buyer may resell the Products before ownership has passed to it solely on the following conditions: (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and (b) any such sale shall be a sale of the Company's property and the Buyer shall deal as principal when making such a sale and unless the contract price is paid in full, the proceeds of such sale shall belong to the Seller.

9.5. The Buyer's right to possession of the Products shall terminate immediately if (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation 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 documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, 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; or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.

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

9.7. The Buyer grants the Company, 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.

9.8. Where the Company is unable to determine whether any Products are the Products in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Products of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

9.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 9 shall remain in effect.

10. Assignments

The Seller may assign the Contract or any part of it to any person, firm or company. The Buyer shall not assign the Contract and/or any of its rights or duties under the Contract without receiving the prior written consent of the Seller.

11. Intellectual Property, Software Products and End User License

11.1. Any drawings, specifications, computer programs, firmware, software, data, reports, tape, disk or other device or record embodying information in any form or other technical information (together "In-put Material") supplied to the Buyer by the Seller in connection with this Contract are provided on the basis of the End User License, the terms of which are incorporated herein by reference and form a part of the Contract between the Parties.

11.2. Unless otherwise specified in this Contract, copyright and all other proprietary rights in the Products and associated documentation, including In-put Material supplied in respect of the Products shall remain vested in the Company.

12. Reverse Engineering

12.1. The Buyer will not attempt to reverse engineer, de-encrypt, or otherwise derive, decompile or reconstruction of the design, internal logic, structure or inner workings (including algorithms and source code) of any software, firmware, hardware, products, models, prototypes, or other items provided by Company.

12.2. The Buyer acknowledges that breach of this Condition may cause the Seller to be irreparably harmed and as such in connection with a claim under this Contract for breach of this Condition, the Seller will be entitled to the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, for any threatened or actual breach of this Condition and no proof of special damages will be necessary to enforce this Condition.

13. Termination

This clause applies if:

(a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or a firm) becomes bankrupt or (being a company) goes into liquidation otherwise than for the purpose of amalgamation or reconstruction; or

(b) an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Buyer; or

(c) the Buyer ceases, or threatens to cease, to carry on business; or

(d) the Seller reasonably believes that any of the events mentioned in clauses 13 (a) through to (c) are likely to occur in relation to the Buyer and notifies the Buyer accordingly. If this clause applies, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary.

(d) the Buyer breaches the provision of Condition 13 (Reverse Engineering).

14. Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

15. Cancellation of Order

The Buyer shall not be entitled to cancel any order for Products and/or services or any part thereof except upon terms which reimburse the Company for loss of profit and all costs, charges and expense incurred by the Company in respect of the Product(s) and/or services or any part thereof up to the date of receipt by the Company of written notification of cancellation. Notwithstanding, the Buyer shall be responsible for the full purchase price of the Product for any cancellation which occurs after 7 days of entering into this Contract.

16. General

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

16.2. 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.

16.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

17. Extended Hardware Warranty

17.1. In the event that the Buyer purchases extended hardware warranty for the Product, the Company will be responsible for all manufacturer's defects arising during the Extended Hardware Warranty Period.

17.2. The Extended Warranty cover does not include damage or defects (including acts or omissions) howsoever caused by the Buyer or any of its agents.

17.3. Prior to Extended Warranty Cover being extended and accepted by the Company, the Buyer shall return the Product to the Company for service. Only upon receipt of an Extended Warranty Certificate by the Company does the cover for Extended Hardware Warranty apply.

17.4. During the Extended Hardware Warranty Period, the Product is automatically within our TEAM Support program for the period of the extended warranty.

18. Applicable Law

The formation, existence, construction, performance, validity and all aspects of this Contract shall be governed by the laws of Scotland and the parties submit to the exclusive jurisdiction of the Scottish Courts.
