

**Coda Octopus Products, Inc (Orlando) USA – TERMS  
AND CONDITIONS OF SALE**

PUBLICATION DATE NOVEMBER, 2019

## Conditions of Sale of Coda Octopus Products, Inc. a Delaware Corporation (“Selling Company”)

These are the standard terms and conditions under which our companies (the Companies defined herein) sell their products and associated services. Unless otherwise agreed in writing, these apply to all sales of products and their associated services.

These Terms and Conditions apply to all our sales, unless we have a written agreement that we have waived these and accepted your terms and conditions for the purchase. These Terms and Conditions along with any other documents referred to herein and our Quotation followed by our Sales Order Confirmation constitute the Contract for the purchase of the product we have quoted you.

**Exclusions:** All your rights under our contract are against the Company within the Group which sells you the product and/or associated services and enforcement of any obligation is against the Selling Company only and not any other company within the Coda Octopus group of companies.

### 1.1. 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 set out in this document including schedules and appendices and which shall include (where applicable) our:

End User License (EULA)	The End User License Agreement shall apply where the Coda deliverables include the supply of software.
Post-Sales Technical Support/TEAM	CodaOctopus® TEAM Program terms and conditions
Personnel Hire	Personnel Hire Terms and Conditions apply where our deliverables include either sending our engineers to your site for training or providing product support around our products. This is an optional purchase
Through Life Support (TLS)	These apply where you have optionally purchased TLS which covers: <ul style="list-style-type: none"><li>• Extended Hardware Warranty for the TLS Period</li><li>• Software Assurance for the TLS Period</li><li>• 2 return to base service and calibration</li><li>• 24x7x365 technical support under CodaOctopus® TEAM Program for the TLS Period</li></ul>

	TLS is available for purchase for either 3 years or 5 years.
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**“Contract”**: these terms and conditions of sale including our Quotation, End User License Agreement, TEAM terms and conditions, Personnel Hire terms and conditions (where applicable), Through Life Support terms and conditions (where applicable), Sales Order Confirmation and any other document expressly incorporated by reference by the Seller and which govern the sale and purchase of products from the Company.

**“Documents”**: includes Manuals, Step Files relating to our Products, Drawings, Method Statements reduced in our Technical Brief provided by the Seller under these terms. For the avoidance of doubts, each time You use our TEAM Service post-purchase of your Product and we provide Documents, these terms and conditions apply.

**“End User License Agreement”**: the terms and conditions which govern the use of our software products including associated media, printed materials and other components and software modules.

**“Intellectual Property”**: any patent, copyright, registered design, design right, trade mark, trade name, know how, or other industrial or intellectual property right of similar nature whether unregistered, registered or registration has been applied for. For the avoidance of doubt, this includes all our Pre-Existing Materials, which we share with you for use in conjunction with our products only and expressly excludes for reverse engineering, decompiling, deconstructing or filing any patents around our Products including using our Specification for this purpose.

**“Order/Purchase Order”**: the Buyer’s order to purchase the Products/and or services defined in the Quotation and Sales Order Confirmation from the Company.

**“Products”**: the product(s) which may be hardware or hardware and software or software alone and which is described in Seller’s Quotation and Sales Order Confirmation and which are supplied to the Buyer by the Seller pursuant to the terms of this Contract.

**“Pre-existing Materials”**: all Documents, information and materials provided by the Seller relating the Products and/or services (including Manuals, Step Files, Drawings, Design, Method Statement contained in Technical Brief, Specifications etc.).

**“Quotation”**: the document supplied by the Seller to Buyer offering the sale of the items and which covers the description of the product, price and terms and conditions of sale.

**“Sales Order Confirmation”**: The Selling Company’s acknowledgment of the Buyer’s Order to purchase the Company’s Product(s).

**“Seller” or “Company”**: The Selling Company furnishing the quotation and which shall be one of the Group Companies listed herein: Coda Octopus Products Limited (place of business Edinburgh, United Kingdom); Coda Octopus Products, Inc. (place of business Orlando, Florida, USA), Coda Octopus Products Pty Limited (place of business Perth, Australia); Coda Octopus R&D Limited (place of business Edinburgh, United Kingdom); or Coda Octopus Products A/S (place of business Copenhagen, Denmark) and all together referred to as “Coda Octopus” or “Group Companies”.

**“Selling Company”**: The Company, being a member of the Coda Octopus Group of companies, and from which the Buyer is dealing and has placed its Purchase Order for the Products and/or associated services and which is the Company the Buyer has recourse in law for any breach of the Contract Terms.

**“VAT”**: Value added tax (or equivalent) chargeable under European Law for the time being and any similar additional tax.

**“Website”**: the website located at [www.codaoctopus.com](http://www.codaoctopus.com) and/or any replacement, successor or supporting URL.

1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. Words in the singular shall include the plural and vice versa.

1.5. A reference in writing includes email but only to the extent that such email is received.

1.6. Where the words include(s) including or in particular are used in this document, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

1.7. All references in this document to “You” or “Your” are references to the Buyer as is defined in these Conditions.

## **2. Application of Terms**

2.1. Subject to any variation under Condition 2.3, the Contract for the purchase of the Product shall be on these Conditions to the exclusion of all other terms and conditions of the Buyer. 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 an authorized Company representative.

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. Our Quotation along with these Conditions constitute the Company's offer to sell the Product(s) and/or associated services to the Buyer and the Buyer's Order constitute an acceptance of the Company's offer to sell.

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 Quotation or the Company's sales order confirmation.

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. Export Licence**

4.1. Some products included in our Quotation are subject to Export Control Regulations (such as some of our real time 3D Sonars, the Echoscope® (depending on the depth rating), and our Motion Series such as F180®, F190® or F175®).

4.2. The Seller and the Buyer will support each other in securing the export licence (where applicable) or shipping the Products to the agreed consignee and place of consignment.

4.3. The Buyer will complete accurately the necessary End User Undertaking and provide this to the Seller in order for the Seller to submit the application for the Export License to the Export Control Organization.

4.4. Once the Export License approved the Seller can only ship the Product(s) to the Consignee Address in the Export License which has been granted.

4.5 After the Products has been shipped, it is the Buyer's responsible to ensure compliance with local Export Licence regulations (where applicable) including where the Buyer wants to ship the said product to a third country.

### **Limitation of Liability**

5.1. Subject to Condition 6 ("**Quality and Warranty**"), the following provisions set out the entire financial liability of the Selling Company to the Buyer in respect of: (a) any breach by the Seller under the Contract (as is defined herein); (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.

5.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.

5.3. 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.

5.4. Subject to Conditions 5.2 and 5.3: (a) 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.

### **6. Quality and Warranty**

6.1. Subject to the other provisions of these Conditions, the Seller warrants that 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.

6.2. The Company shall not be liable for a breach of the warranty in Condition 6.1 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.

6.3. The Company shall not be liable for a breach of the warranty in condition 6.1. 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 verbal 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 or opens such Products without the written consent of the Company.

6.4. Subject to Conditions 6.2. and 6.3, if any of the Products do not conform with any of the warranties in Condition 6.1, 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.

6.5. If the Company complies with Condition 6.4, the Seller shall have no further liability for a breach of the warranty in Condition 6.1 in respect of such Products.

6.6. Any Products replaced shall belong to the Company and the warranty shall remain unaltered (12 months from delivery of the original product).

6.6. The repair or replacement of the Product under this Clause 6, in no way operate to re-set the Warranty provided under the sale of the Product. The Warranty period remains unaltered by the repair or the replacement of the Product by the Seller.

## **7. Price**

7.1. All prices provided in the Company's Quotation for the Products are exclusive of VAT, or its equivalent 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.

## **8. Payment**

8.1. 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.

8.2. Time for payment shall be of the essence.

8.3. 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 HSBC UK 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.

8.4 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.

8.5 The Buyer is responsible for all bank charges when transferring the amounts due to the Seller's designated account.

## **9. Delivery**

9.1. Unless otherwise stated in the Quotation terms, delivery of the Products shall take place at the Company's place of business (Ex-Works terms). The Buyer is therefore responsible for costs of shipping the Products to its designated place, for export and import clearance and for arranging transit insurance as the Buyer considers necessary. On the Buyer's request the Seller can assist the Buyer in arranging the shipment of the Products to the agreed place of consignment. In rendering such assistance, the Company acts as the Buyer's agent for these limited purposes.

9.2. 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 from the Buyer placing its firm order.

9.3. 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 90 days without the consent of the Buyer.

9.4. 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 authorizations: (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).

## **10. Risk and Title**

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

10.2. 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.

10.3. 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.

10.4. 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.

10.5. The Buyer's right to possession of the Products shall terminate immediately if 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.

10.6. 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.

10.7. 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.

10.8. 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.

10.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 10 shall remain in effect.

## **11. Assignments**

11.1 The Seller may assign the Contract or any part of it to any person, firm or company.

11.2 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.

## **12. Intellectual Property including limitation on use of Company's Trade Mark in the Buyer's course of Business**

12.1. Nothing in this Contract gives the Buyer any rights to our Intellectual Property including transferring any of our Intellectual Property as a result of the sale of the product to you.

12.2. 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 this Contract including the End User License Agreement, the terms of which are incorporated herein by reference and form a part of the Contract between the Parties.

12.3. All rights in the In-put Materials accompanying the Products including software, instruction manuals, Documents, etc. remain vested with the Seller and the Buyer has a limited licence to use the in-put Material but not for developing commercial offerings around the Seller's products or seeking patents or other Intellectual Property Rights around the Company's Products.

12.4. The Company uses trademarks (both registered and unregistered trade mark) to distinguish and protect its products (including its brands) in the market place.

12.5. The Company's trade mark is marked on its products and/or on its product literature. In selling the Buyer the product set out in the Quotation, the Company does not transfer any rights of use in its trade mark to the Buyer, and the Buyer is neither authorized to use the Seller's trademarks or similar trade marks in connection with the said Buyer's business activities nor in the course of the Buyer's business. A limited licence is granted to the extent necessary to use the product as is intended. The Seller's trademarks, trade names or get-up which resemble the Seller's trademarks, trade names or get-up and which would therefore be likely to confuse or mislead the public or any section of the public shall not be used by the Buyer in the course of its business.

12.6. The Buyer must not remove, alter or otherwise tamper with any of the Seller's trademarks, trade names, logos, numbers or other means of identification on the Products or the packaging which come into the Buyer's possession, custody or control, and shall not place any trade mark or trade name of its own on the Seller's products or any packaging or other materials used in connection therewith.



12.4. If the Buyer at any point in time sells the Products the Buyer shall ensure that provisions similar to this Condition 12 protecting the Company's Intellectual Property is included in the contractual basis between the Buyer and its purchaser.

12.5. Breach of these provisions shall be considered a material breach which entitles the Company to seek remedy. Furthermore, such breach is deemed to entitle the Company to take steps to protect its intellectual property rights including seeking appropriate injunctions and/or revoking any License granted to use the Product.

### **13. Reverse Engineering**

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

13.2. 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 seek all remedies available in the appropriate court including equitable remedy 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.

13.3. In the event of such breach, the Company shall have the right to recall its Products including software.

### **14.3 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 12 or 13 (Intellectual Property and Reverse Engineering).

### **15. Force Majeure**

15.1. 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.

## **16. Cancellation of Order**

16.1. 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.

## **17. General**

17.1. 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.

17.2. 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.

17.3. 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.

17.4. 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.

## **18. Extended Hardware Warranty**

18.1. The Buyer may optionally purchase extended hardware warranty for the Product(s).

18.2. Extended Hardware Warranty will cover the Product which is the subject matter of the Contract against manufacturer's defects which may arise during the Extended Hardware Warranty Period.

18.3. Extended Hardware Warranty does not cover damage or defects (including acts or omissions), howsoever caused by the Buyer.

## **19. Through Life Support (TLS)**

19.1. The Buyer may optionally purchase TLS for a period of 3 years or 5 years.

19.2. During the TLS contracted period, TLS provides the Buyer with:

19.2.1. All minor and major software upgrade – which apply to the Product – during the TLS contracted period.

19.2.2. Extended Hardware Warranty for the cover set out in Clause 18 above for the TLS contracted period.

19.2.3. Return to base service and calibration of the Product during the TLS contracted period.

19.2.4. The full terms and conditions covering TLS is set out in the Schedule and can also be accessed from the Company's website.

## **20. Information**

20.1 The Buyer acknowledges that by seeking information on our products from the Company and/or its agents, including specification, capability, pricing, quotation, and order you acknowledge that the Company may obtain and retain in accordance with local applicable laws, including data protection regulations, data relating to your bank account, your identity (where individual) debit or credit card information and we may carry out credit and identity checks.

20.2. The Seller will when handling information about the Buyer act in accordance with its Privacy Policy in force from time to time and is accessible from the Buyer's website

[www.codaoctopus.com/privacy-policy](http://www.codaoctopus.com/privacy-policy) which is incorporated by reference in these Terms and Conditions of Sales.

**21. Applicable Law and Jurisdiction**

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

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## TERMS AND CONDITIONS

### END USER LICENCE AGREEMENT (“EULA”)

PUBLICATION DATE 18 November, 2019

### SOFTWARE LICENCE TERMS AND CONDITIONS

BY INSTALLING OR USING THE LICENSED SOFTWARE FROM CODA OCTOPUS, YOU ARE AGREEING TO BE BOUND BY THIS SOFTWARE LICENCE AGREEMENT (“AGREEMENT”).

IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT INSTALL OR USE THE LICENSED SOFTWARE OR CODA OCTOPUS ENHANCEMENTS.

THE “EFFECTIVE DATE” FOR THIS AGREEMENT IS THE DAY YOU INSTALL THE SOFTWARE (INCLUDING ANY DERIVATIVE THEREFROM SUCH AS UPDATES AND/OR UPGRADES).

#### AGREED TERMS

#### 2. INTERPRETATION

2.1. The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

**Activation Key:** means collectively the specific Serial Number, code and authorization for each copy of the Licensed Software issued by Coda Octopus to You.

**Agreement or License:** means this agreement under which the Licensor licenses the Product (as is defined hereinafter)

**Coda Octopus:** Coda Octopus Products, Inc. a Delaware Corporation with its place of business 3300 S Hiawasse Rd, Suite 104-105, Orlando, Florida, 32835 and is also referred to as “we”, “us” and “our” as the context requires.

**Coda Octopus Enhancements:** means files or enhancements to files in which the copyright is owned by Coda Octopus or distributed by Coda Octopus from time to time. Coda Octopus Enhancements are not defined as Software (“Enhancements”).

**Coda Octopus Website:** means [www.codaoctopus.com](http://www.codaoctopus.com)

**Documentation:** means the user manuals and supporting documentation in electronic form (or otherwise) provided by Coda with the Licensed Software and/or Enhancements under this Agreement.

**Dongle:** means the hardware device on which licence key is loaded and which carries a unique Serial Number.

**Initial Warranty Period:** means the period which we warrant that the Product will be free from material defects and work in accordance with our specification provided in the Documentation.

**Licensor:** means Coda Octopus.

**Licensee:** means You and “Your” is also a reference to You.

**Licensed Software:** means the specific software licensed to You under the terms of this Agreement (as specified in the LAAK or LAD (defined in Clause 2 of this Agreement) including any Updates or Upgrades but excludes Coda Octopus Enhancements.

**Product:** means the Licensed Software including, if applicable, any Updates and Upgrades but excluding any Coda Octopus Enhancements, which is the subject matter of this Agreement.

**Serial Number:** means a unique set of characters associated with a specific copy of the Licensed Software issued by Coda Octopus (based on the specific configuration and release of the Licensed Software and the license type and term).

**TEAM:** means Coda Octopus technical support program. Terms and Conditions for TEAM can be accessed from Coda Octopus Website.

**Temporary Licence:** means a temporary Licence of the Licensed Software which Coda Octopus may supply to you for either trial purposes or such specific purpose as Coda Octopus may agree with you from time to time.

**Third-Party Software:** means certain software supplied by third parties that Coda Octopus provides access to as part of the Licensed Software.

**Update:** means a revision or patch to the Licensed Software that improves the functionality of the Licensed Software and may contain new features or enhancements, which is not an Upgrade.

**Upgrade:** means a subsequent version of the Licensed Software that Coda Octopus designates as a new release and makes generally commercially available or a different variant of the Licensed Software that Coda Octopus makes generally commercially available.

2.2. The headings in this Agreement are inserted for convenience only and shall not affect its construction.

2.3. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2.4. A reference to one gender includes a reference to the other gender.

2.5. Any schedule to this agreement forms part of (and is incorporated into) this agreement.

## **AGREEMENT**

This "License" is a legal agreement between the Licensor and the Licensee for the use of the Licensed Software and the Documentation. This may include associated media, printed materials, and other components and software modules including but not limited to drivers that Licensor or its authorized agents may provide to You or make available to You either at the time of the Licence or thereafter ("Product"). We have licensed the Product to You and not sold it. The terms of the License are set out in this Agreement.

The Product is protected by copyright laws as well as other intellectual property laws.

### **3. LICENSE, DONGLE AND ACTIVATION KEY.**

3.1. Coda Octopus shall issue You a "License and Activation Key ("LAAK)" via electronic delivery or courier (e.g. FedEx, UPS, DHL) or a "Licence and a Dongle (LAD)" via post or courier. The LAAK or LAD, as the context requires, are incorporated herein by reference into this Agreement.

3.2. Single –User Licence Grant. Subject to the terms and conditions of this Agreement, Coda Octopus grants to You a non-assignable, non-transferrable license and non-exclusive licence of the Product without the right to sublicense, to use the Licensed Software in object-code form only and solely for Your business.

3.3. All Upgrades and Updates or Temporary Licence pertaining to this Product are licensed to You on these terms and conditions also and the grant of the licence for such Upgrades or Updates are on a non-assignable, non-transferrable and non-exclusive basis. Unless otherwise agreed, all Updates and Upgrades are released to You on these terms and conditions.

3.4. If you have a licence for a LAAK you may install and run on a single computer.

3.5. If you have a LAD you may install on multiple computers but may only run the said Licensed Software on a single computer at any one time.

3.6. You may transfer the Licensed Software from one computer to another owned by You.

3.7. During the Warranty Period, which is one year from the date we licence You the Product, we will provide You with a TEAM subscription under which we will provide technical support for the Product including provision of minor releases of the Licensed Software and bug fixes.

3.8. Unless You renew Your TEAM subscription after the first year, Your Product will be classified as unsupported by Coda Octopus.

3.9. All rights not expressly granted to You are retained by the Licensor.

#### 4. LICENCE TO CODA OCTOPUS ENHANCEMENTS

4.1. Subject to the terms and conditions of this Agreement, Coda Octopus grants You a non-assignable, non-transferrable and non-exclusive license without the right to sublicense to use Coda Octopus Enhancements solely with the Licensed Software for Your internal business. In addition, Coda Octopus grants a non-assignable, non-transferrable and non-exclusive license to modify, reproduce and distribute the Coda Octopus Enhancements to create Your enhancements solely for use with the Licensed Software.

4.2. THE CODA OCTOPUS ENHANCEMENTS ARE PROVIDED TO YOU ON AN "AS IS" AND "WHERE IS" BASIS AND WITHOUT WARRANTY OF ANY TYPE OR KIND. CODA OCTOPUS AND ITS THIRD-PARTY LICENSORS HEREBY EXPRESSLY DISCLAIM AND EXCLUDE ALL WARRANTIES AND CONDITIONS, WHETHER STATUTORY, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE CODA OCTOPUS ENHANCEMENTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY ON FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY'S RIGHTS.

#### 5. RESTRICTIONS.

5.1. Neither the Licensee nor his agents or affiliates may:

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- (b) modify, translate or create derivative works of the Licensed Software, the Temporary License or the Updates or Upgrades; or
- (c) remove, modify, or obscure any copyright notices or other proprietary notices or legends appearing on or in the Licensed Software, Temporary Licence or Coda Octopus Enhancements or any portion thereof; or
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- (e) embed the Licensed Software in any third-party application unless otherwise authorized in writing in advance by an authorized officer of Coda Octopus; or
- (f) make unauthorized copies of the Licensed Software, Coda Octopus Enhancements or Temporary Licence (as the context requires); or
- (g) apply any new release of software released to You under our TEAM program to any other Licensed Software which does not have the benefit of an active Coda Octopus TEAM subscription.

#### 6. THIRD PARTY SOFTWARE

6.1. The Third-Party Software is subject to various other terms and conditions imposed by the licensors of such Third-Party Software. A list of the applicable Third-Party Software license terms is provided in Exhibit A of this Agreement and on Coda Octopus website. Your use of the Third-Party Software is subject to, and governed by, the specified Third-Party license terms. You agree to comply with such Third-Party license terms (as are in force from time to time). It is the Licensee's responsibility to make himself aware of the Third-Party Licensor's terms and conditions as in force from time to time.

#### 7. DOCUMENTATION

7.1. Subject to the terms and conditions of this Agreement, Coda Octopus grants to You a non-assignable, non-transferrable and non-exclusive license, without right to sublicense, to use the Documentation in connection with Your authorized use of the Licensed Software. You may not reproduce or distribute the Documentation in any manner, whether physically or electronically, without the express written permission of Coda Octopus.

## 8. TECHNICAL SUPPORT (CODA OCTOPUS TEAM PROGRAM)

8.1. The Product comes with a twelve (12) months warranty (Initial Warranty Period).

8.2. During the Initial Warranty Period, you will have the benefits of a TEAM membership under which we will provide You with the support set forth in the terms and conditions for TEAM membership. A summary of these terms and conditions are set out in Clause 8. The full TEAM membership terms and conditions can be found on Coda Octopus Website. In the event of a conflict between the TEAM membership terms and conditions and these terms, this Agreement shall prevail.

8.3. Upon the expiry of the Initial Warranty Period Your Product will only benefit from the TEAM support set out in Clause 8 below, if You pay the membership fee quoted to You by the Licensor.

8.4. If you have purchased Through Life Support, your Product will be covered for technical support and software upgrades (and any other rights provided for) during the Through Life Support period.

## 9. TEAM SUPPORT MEMBERSHIP

9.1. Subject to having an active TEAM membership or your Product is covered by Through Life Support and following our recommendations concerning the use of the Product, we will provide You with the following Support:

(a) The Licensor will provide email and telephone support to You for the current and the immediately preceding versions of the Product.

(b) The Licensor will investigate problems or questions that You have relating to the Product promptly.

(c) You agree to provide adequate information to us to assist in the investigation and to confirm that any problems have been resolved.

(d) The Licensor does not provide guaranteed response time but will make good faith effort to answer emails and voice mails promptly.

(e) We will supply to You, at no additional charge, any improvements or modifications to the Product that we make generally available as a minor release including bug fixes. Any such improvements or modifications shall become part of the Product for all purposes of this Agreement.

9.2. You acknowledge and agree that the Support to be provided by us hereunder is limited to the most current version of the Product and the immediately preceding version.

9.3. If You lose Your Dongle we will be unable to replace this unless You pay the full Licence Fee for this. During the Initial Warranty Period or where You renew Your TEAM membership or if you have purchased our Through Life Support package, we will replace damaged dongles (but not lost Dongles).

## 10. EXCLUSIONS.

10.1. The Licensor's obligation to provide Support is contingent upon proper use of the Product and full compliance with this Agreement. The Licensor shall be under no obligation to provide Support should such services be required due to (a) failure to operate the Product within the systems requirements provided for the Product; (b) any modification or attempted modification of the Product by You or any third party; or (c) Your failure or refusal to implement Product changes recommended by the Licensor.

10.2. Unless You have purchased our Through Life Support package to receive Updates and Upgrades (which are not minor releases) You must pay the applicable fee and agree to our standard terms and conditions governing the use of the Updates and Upgrades.

## 11. INTELLECTUAL PROPERTY RIGHTS.

11.1. Subject to the license granted herein, the Licensed Software, Updates, Upgrades, Coda Octopus Enhancements and the Documentation contain copyrighted material and other proprietary material and information of Coda Octopus and/or its licensors. Coda Octopus and/or its licensors shall retain all right, title and interest, including all intellectual property rights in and over the Licensed

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## 12. WARRANTY.

12.1. The Licensor warrants that for a period of twelve (12) months from the date of delivery ("Warranty Period"), under normal use, the Product will perform substantially in conformance with the specifications published in the Documentation.

12.2. During the Warranty Period, the sole obligation of the Licensor (and Your sole remedy under the warranty in this Section), if You provide written notice of the Licensor's failure to comply with the above Warranty, is that the Licensor will use reasonable commercial efforts to correct such nonconformity in the Product in accordance with Coda Octopus terms and conditions. In addition, if the Licensor determines it is not commercially reasonable to correct the nonconformity, the Licensor may elect to terminate the license to the Product. In the event of such termination, the Licensee will promptly return the Product to the Licensor. Upon receipt of the Product from Licensee, the Licensor will return to Licensee all license fees (and any unused support fees) paid to the Licensor by You for the Product.

12.3. The Warranty set forth above in Clause 11.1 does not apply to, and the Licensor shall have no obligation with respect to, any non-conformity arising as a result of (i) use of the Product other than as specified under this Agreement and the related Documentation; (ii) any modification or alteration of the Product performed other than by the Licensor or its agents, or (iii) transfer of the Product to any computer system other than the ones on which the Product is authorized to be installed, except as permitted in this Agreement.

12.4. Nothing in this Clause affects the Licensee's statutory rights.

## 13. DISCLAIMER.

13.1. Other than the Warranty set forth in Clause 11 herein, and to the maximum extent permitted by applicable law, the Licensor, its authorized resellers and their subsidiaries provides the Product and any support services related to the Product ("Support Services") AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Product, and the provision of or failure to provide support services.

## 14. LIMIT OF LIABILITY AND EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.

14.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE LICENSOR, ITS AUTHORIZED RESELLERS OR THEIR SUBSIDIARIES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE OR DOCUMENTATION, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS LICENSE.

## 15. LIMITATION OF LIABILITY AND REMEDIES.

15.1. Notwithstanding the foregoing, any damages that You might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of the Licensor, its resellers and their subsidiaries under any provision of this License



and Your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by You for the Product. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

#### 16. GENERAL.

16.1. You may not assign this Agreement or any right or interest hereunder, by operation of law or otherwise, without the express prior written consent of the Licensor. Any attempt to assign this Agreement, without such consent, will be null and void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

16.2. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

16.3. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

16.4. You shall be bound by and comply with the provisions set forth in Exhibit A to this Agreement. If this Agreement contradicts with Exhibit A, Exhibit A shall prevail.

#### 17. COMPLIANCE WITH LICENSES.

17.1. You agree that upon request from the Licensor or its authorized representative You will within thirty (30) days fully document and certify that the use of any and all of the Licensor's Products at the time of the request is in conformity with Your valid licenses from the Licensor.

#### 18. DISCONTINUING OR MODIFYING SERVICES.

18.1. You acknowledge that the Licensor has the right to discontinue the manufacture and development of any of the Product and the support for that Product, in its sole discretion at any time, including the distribution of older Product versions, provided that the Licensor agrees not to discontinue the support for that Product during the current annual term of this Agreement, subject to the termination provisions herein.

18.2. Notwithstanding the foregoing of this clause, if the Licensor discontinues the manufacture and support for a particular Product, Support for any remaining Products covered by this Agreement shall not be adversely affected.

18.3. The Licensor reserves the right to alter the Support, in its sole discretion but in no event shall such alterations result in (a) diminished support from the level of support set forth herein; (b) materially diminished obligations for the Licensor; or (c) Your rights being materially diminished.

#### 19. GOVERNING LAW AND JURISDICTION

19.1. The formation, existence, construction, performance, validity and all aspects of Agreement shall be governed by the laws of Florida and the parties submit to the exclusive jurisdiction of the Florida Courts.

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## EXHIBIT A

### TRADEMARK ACKNOWLEDGEMENT

Fluent is a trademark of Microsoft Corporation and the Fluent user interface is licensed from Microsoft Corporation.

**SHOULD YOU HAVE ANY QUESTIONS CONCERNING THIS LICENCE, PLEASE CONTACT CODA OCTOPUS AT THE ADDRESS GIVEN BELOW.**

Coda Octopus Products Ltd,

38 South Gyle Crescent,  
South Gyle Business Park,  
Edinburgh, EH12 9EB,  
United Kingdom

Email: [support@codaoctopus.com](mailto:support@codaoctopus.com)

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#### **2. ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS.**

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  - Third Party Distribution. You may permit distributors of your programs to copy and distribute the Distributable Code as part of those programs.
- ii. Distribution Requirements. **For any Distributable Code you distribute, you must**
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  - require distributors and external end users to agree to terms that protect it at least as much as this agreement;
  - display your valid copyright notice on your programs;
  - indemnify, defend, and hold harmless Microsoft from any claims, including attorneys’ fees, related to the distribution or use of your programs; and
  - if the software is Microsoft SQL Server 2008 Express with Tools, distribute it with either:
    - Microsoft SQL Server 2008 Express Edition or
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- iii. Distribution Restrictions. **You may not**
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  - distribute Distributable Code to run on a platform other than the Windows platform;
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  - modify or distribute the source code of any Distributable Code so that any part of it becomes subject to an Excluded License. An Excluded License is one that requires, as a condition of use, modification or distribution, that
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    - others have the right to modify it.

**3. INTERNET-BASED SERVICES.** Microsoft provides Internet-based services with the software. It may change or cancel them at any time.

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- publish the software for others to copy; or
- rent, lease or lend the software.

**5. BACKUP COPY.** You may make one backup copy of the software. You may use it only to reinstall the software.

**6. DOCUMENTATION.** Any person that has valid access to your computer or internal network may copy and use the documentation for your internal, reference purposes.

**7. TRANSFER TO A THIRD PARTY.** The first user of the software may transfer it and this agreement directly to a third party. Before the transfer, that party must agree that this agreement applies to the transfer and use of the software. The first user must uninstall the software before transferring it separately from the device. The first user may not retain any copies.

**8. EXPORT RESTRICTIONS.** The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users and end use. For additional information, see [www.microsoft.com/exporting](http://www.microsoft.com/exporting).

**9. SUPPORT SERVICES.** Because this software is “as is,” we may not provide support services for it.

**10. ENTIRE AGREEMENT.** This agreement, and the terms for supplements, updates, Internet-based services and support services that you use, are the entire agreement for the software and support services.

**11. APPLICABLE LAW.**

- a. United States. If you acquired the software in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.
- b. Outside the United States. If you acquired the software in any other country, the laws of that country apply.

**12. LEGAL EFFECT.** This agreement describes certain legal rights. You may have other rights under the laws of your country. You may also have rights with respect to the party from whom you acquired the software. This agreement does not change your rights under the laws of your country if the laws of your country do not permit it to do so.

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