

# TERMS AND CONDITIONS OF SALE

## Salland Engineering (Europe) B.V.

In these terms and conditions:

- "Salland" shall mean Salland Engineering (Europe) B.V., a Dutch corporation, registered with the Chamber of Commerce under number 05062593;

- "Customer" shall mean the company or person ordering any products or services of Salland or the company or person identified in the quotation, offer or invoice associated herewith.

### 1. Offer; Confirmation; Agreement

1.1 These terms and conditions ("Terms and Conditions") apply to and form an integral part of:

- all quotations and offers ("Offer") for the sale of products ("Deliverables") by Salland to Customer and the supply of services ("Services") by Salland to Customer;

- all acceptances, acknowledgements or confirmations by Salland ("Confirmation") of any order of Customer;

- any agreement between Salland and Customer resulting from such Offer or Confirmation ("Agreement").

1.2 These Terms and Conditions shall constitute all of the terms and conditions of any Offer and Confirmation by Salland and any Agreement between Salland and Customer with regard to the sale by Salland of Deliverables to Customer and/or the supply of Services by Salland to Customer.

1.3 Any terms and conditions issued by Customer or referenced on any document or documents issued by Customer either before or after issuance of any document by Salland setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by Salland and any such document shall be wholly inapplicable to any Offer, Confirmation or Agreement and to any sale of Deliverables or Services made by Salland and shall not be binding in any way on Salland. No Offer, Confirmation or Agreement constitutes an acceptance by Salland of any other terms and conditions and Salland does not intend to enter into an agreement other than under these Terms and Conditions.

### 2. Responsibility

2.1 Customer is responsible for providing Salland with error-free materials and information ("Customer Materials") to the extent needed for preparation and manufacture of Deliverables and performance of Services. Salland is not responsible for errors in Customer Materials or use of the same in Deliverables or Services.

2.2 Salland will be entitled to charge Customer for any costs incurred by Salland for the correction of any errors in Customer Materials.

### 3. Pricing

3.1 Prices will be as quoted by Salland or, in the absence of a written quote, as set out in Salland's published list price at the time of Confirmation of an order by Salland.

3.2 All prices are subject to change without notice, unless a firm Offer is made in writing and accepted within 30 (thirty) days or such other period as specified in writing by Salland.

3.3 Prices are exclusive of all sales, use and similar taxes. Any tax Salland may be required to collect or pay upon the sale or delivery of Deliverables or Services shall be paid by Customer at the time Deliverables or Services are delivered, and Customer remains liable for any other taxes, including taxes not collected and Customer agrees to indemnify Salland against all liability associated therewith.

3.4 Claims for retroactive cash discounts will not be honored.

### 4. Invoicing; Payment terms

4.1 Unless agreed otherwise between Salland and Customer in writing, Salland may invoice upon delivery of Deliverables and Services. If deliveries are made in installments, each installment may be invoiced separately and shall be paid by Customer when due.

4.2 Payment for work performed by Salland but not yet delivered will be due and payable upon Customer's sale or discontinuance of its business, illiquidity or upon its filing for bankruptcy protection or being declared bankrupt.

4.3 Payment terms are net 30 (thirty) days or such other term as stated in the Offer (the "Due Date").

4.4 Salland retains the right to refuse credit terms to any Customer. If, in Salland's judgment, Customer's financial condition at any time does not justify the payment terms specified herein, then Salland may require full or partial payment in advance or other payment terms as condition for delivery and Salland may suspend, delay or cancel any credit, delivery or any other performance by Salland.

4.5 Salland may also require full or partial advance payment for any Customized Work (as defined in Section 7.1).

4.6 Invoices not paid by Customer on the Due Date will be considered in default and may be referred to an attorney or collection agency. Customer agrees to reimburse Salland its reasonable expenses, including attorneys' and other fees incurred in collecting any amounts due.

4.7 Balances not paid on the Due Date will be subject to an interest charge on the outstanding balance at the rate of 1.5% (one and a half per cent) per month.

4.8 Payments received by Salland after the Due Date shall be applied against interest, expenses and principal as Salland determines in its sole discretion.

4.9 Customer shall not offset, withhold or reduce any payment(s) due by it to Salland.

### 5. Delivery; Inspection; Acceptance; Title

5.1 Salland will use its commercially reasonable efforts to provide Deliverables and Services in accordance with any schedule estimate provided to Customer. However, such schedule estimates are non-binding, are best estimates only and Salland shall not be liable for any damages or penalties for delay in delivery or for failure to give notice of such delay.

5.2 Shipment of Deliverables shall be EXW (Ex Works; Incoterms 2010). Risk of loss or damage shall pass to Customer upon Salland making Deliverables available, suitably packed, at Salland's premises in Zwolle, the Netherlands.

5.3 At the time of delivery, Customer shall promptly inspect Deliverables for conformance with the order.

5.4 Deliverables shall be deemed accepted by Customer immediately upon completion of inspection but in any event no later than one week after delivery, unless Customer shall within one week after delivery, identify and report to Salland errors not present within the Customer Materials.

5.5 No Deliverables may be returned without the prior authorization of Salland.

5.6 Title in the Deliverables shall pass to Customer upon payment in full of the purchase price in respect thereof.

### 6. Cancellation; Termination

6.1 In the event Customer cancels an order due to no fault of Salland, a cancellation charge will be assessed by Salland based upon costs incurred and time spent, plus a reasonable profit.

6.2 Salland may terminate any order upon 5 (five) days prior notice if the Agreement is breached by Customer.

### 7. Rights in Deliverables

7.1 Unless agreed otherwise between Salland and Customer in writing, effective upon acceptance of the Deliverables by Customer and receipt of payment from Customer for all Deliverables, all rights, title and interest in any custom work specifically designed, specified, requisitioned and paid for by Customer that is embedded in the Deliverables ("Customized Work") shall pass to Customer. However, Salland retains all rights, title and interest in any and all Salland intellectual property ("Salland IP") which is embedded in the Deliverables. Salland also retains all rights, title and interest in any Customized Work for which full payment has not been made by Customer.

7.2 Salland shall not be restricted from preparing Deliverables or performing Services substantially similar in nature to the Deliverables and Services provided hereunder for any third party, both during and after the term of the Agreement.

7.3 Salland shall under no Agreement be restricted from using any ideas, concepts, know-how, methodology, content or techniques related to Deliverables or Services, and Salland retains and Customer grants a royalty-free license to use Customized Work for all purposes, applications or customers, provided that such use does not infringe the patent, copyright, or trademark rights of Customer.

### 8. Support

8.1 Customer may order support services from Salland's support offering as available ("Support"). Any Support obligations are subject to the Deliverable-specific or Services-specific Support terms and the terms indicated in the Offer, Confirmation or Agreement.

8.2 To be eligible for Support, Deliverables must be at current specified revision levels and, in Salland's reasonable opinion, in good operating condition.

8.3 Relocation of Deliverables may result in additional Support charges and modified Support response times. Support of Deliverables moved to another location is subject to availability.

8.4 Customer is responsible for removing any third-party products not eligible for Support to enable Salland to perform Support. Additional charges, computed at Salland's standard rates, may be incurred for any extra work caused by such third party products.

8.5 Support does not cover any damage, defects or failures caused by (i) use of non-Salland media, supplies and other products; (ii) site conditions that do not conform to Salland's site specifications; or (iii) neglect, improper use, fire or water damage, electrical disturbances, transportation, work, or modification by non-Salland employees or subcontractors, or (iv) other causes beyond Salland's control.

8.6 Customer is responsible for maintaining a procedure external to Deliverables to reconstruct lost or altered Customer files, data or programs.

8.7 Customer will have a representative present when Salland provides Support at Customer's site.

8.8 Customer will notify Salland if Deliverables are being used in an environment that poses a potential health hazard to Salland employees or subcontractors. Salland may require Customer to maintain such Deliverables under Salland supervision.

8.9 Either party may remove Deliverables from being subject to Support or cancel a Support obligation upon 60 (sixty) days advance written notice.

### 9. Warranty

9.1 Salland warrants that under normal use each Deliverables' hardware ("Hardware") shall, at the time of delivery to Customer and for a period of 12 (twelve) months thereafter, or such other period as may be agreed upon in writing between Salland and Customer, be free from defects in material or workmanship and shall substantially conform to Salland's specifications for such Hardware, or such other specifications as Salland has agreed to in writing, as the case may be.

9.2 Salland warrants that its licensed software ("Software") will conform materially to its specifications and be free of malware at the time of delivery. Salland's warranties for Software will begin on the date of delivery and unless otherwise specified by Salland, will last for 90 (ninety) days.

9.3 Salland does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.

9.4 Salland does not warrant that the operation of Hardware or Software will be uninterrupted or error free.

9.5 If Salland receives notice of defects or non-conformance of Hardware or Software as defined in this Section 9 during the warranty period, Salland's sole and exclusive obligation, and Customer's sole and exclusive right, with respect to claims under a warranty shall be limited to the replacement or repair of the affected Hardware or Software. Customer will pay expenses for return of such Hardware or Software. Salland will pay expenses for re-shipment of repaired or replacement Hardware or Software. If Salland is unable, within a reasonable time, to repair or replace the affected Hardware or Software, Customer will be entitled to terminate the Agreement as it relates to the affected Hardware or Software and receive a refund of the purchase price upon prompt return of the Hardware or Software to Salland. The defective or non-conforming Products shall become Seller's property as soon as they have been replaced or credited for.

9.6 Salland warrants that Support will be provided in a professional and workmanlike manner.

9.7 Some newly manufactured Hardware may contain and Support may use remanufactured parts that are equivalent to new in performance.

9.8 The above warranties do not apply to alleged defects or non-conformance resulting from improper or inadequate site preparation, maintenance, repair, installation or calibration by Customer; Customer or third party supplied hardware or software, interfacing or supplies; unauthorized modification, improper use or operation outside of the specifications for the Deliverables, Hardware or Software by Customer; abuse, misuse, negligence, accident, loss or damage in transit after risk of loss to the Deliverables has passed to Customer.

9.9 The limited warranties in this Section are only given to Customer and are not given to, nor may be used by any third party.

9.10 THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE AND NON-INFRINGEMENT, AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE DELIVERABLES AND SERVICES PROVIDED BY SALLAND.

### 10. Design changes

10.1 Salland reserves the right to make changes in the design of its products at any time without incurring any obligation to make equivalent changes in products previously manufactured or shipped.

### 11. Upgrades and retrofits

11.1 Salland may offer upgrades and retrofits for product enhancement or to correct safety deficiencies at terms as determined by Salland.

11.2 Contract terms for performance-related upgrades and retrofits are based on the level of Support that has been purchased by Customer.

11.3 Safety-related upgrades and retrofits are available independent of the level of purchased Support at terms as determined by Salland. If a safety-related upgrade or retrofit is required, Salland will notify the designated contact at the Customer's facility.

11.4 Customer should contact Salland from time to time for the latest status of upgrades and retrofits.

### 12. Confidentiality; Proprietary rights

12.1 Salland's proprietary data include, without limitation, all non-public ideas, product concepts, hardware, engineering data software, manufacturing processes and techniques, reports, drawings, films, tapes, computer data bases and other information embodied in any Deliverable or otherwise disclosed to Customer by Salland.

12.2 Customer shall protect and preserve the confidentiality of all of the proprietary data known to Customer specifically, without limiting the generality of the foregoing. Customer will not use any portion of the proprietary data except as maybe required in connection with Customer's operation of the Deliverables purchased from Salland. No proprietary data, nor any disclosure, publication or discussion thereof with or to third parties, other than employees who need to know the proprietary data for the purpose of utilizing the Deliverables and who have agreed to protect its confidentiality, will be permitted without express prior consent of Salland in each instance.

12.3 Customer shall take all appropriate actions to secure the compliance by its officers, employees, agents and directors with the terms of this Section.

12.4 Customer acknowledges that Salland's remedies for any breach of this Section may include, in addition to damage and other available remedies, injunctive relief enjoining any such breach.

12.5 If there is a Mutual Non Disclosure Agreement ("NDA") in place between Salland and Customer this NDA will replace this Section 12, and the NDA, together with the Agreement will constitute the entire agreement between Salland and Customer.

### 13. Disclaimer; Limitation of Liability; Force Majeure

13.1 Neither Salland nor its suppliers shall be liable to Customer or any third party for any punitive, special, consequential, incidental or indirect damages including, without limitation, loss of profits and/or loss of use or loss of goodwill, including where arising out of a delay in delivery or a delay in meeting the Deliverables or Services in question, or arising out of the use or inability to use Deliverables or Services, even if advised of the possibility of such damages.

13.2 The maximum aggregate liability of Salland relating to or arising out of an Agreement, whether in contract, tort or otherwise, shall not exceed the total amounts paid by Customer to Salland for the Deliverables or Services in question.

13.3 Salland will not be liable for any failure or delay in its performance under an Agreement due to any cause beyond its reasonable control, including but not limited to acts of war or terrorism, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet.

### 14. General Provisions

14.1 *Attorneys' Fees* – In case suit or action is brought to enforce any of the terms or conditions of an Agreement, the successful party shall be entitled to reasonable attorneys' fees and costs.

14.2 *Severability* – In the event that any one or more provisions of an Agreement shall be declared invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, enforceability of the remaining provisions contained therein shall not in any way be affected or impaired thereby.

14.3 *Entire agreement* – An Agreement will constitute the entire agreement between Salland and Customer with respect to its subject matter, notwithstanding any inconsistent or additional terms and conditions in Customer's orders, in any other documents submitted to Salland by Customer or any other agreement. To the extent that terms and conditions or prices in an Agreement conflict with any price lists, the terms and conditions of the Agreement will prevail. An Agreement may only be modified by a written amendment signed by the authorized representatives of both Salland and Customer.

14.4 *Assignability; Right to pledge* – Neither the benefits nor obligations of a Confirmation or Agreement are assignable or can be pledged by Customer without the written consent of Salland. Any and all accounts receivable and/or other rights of Salland, obtained under any Confirmation or Agreement, can be assigned and/or transferred freely and/or pledged to third parties by Salland. Customer agrees that Salland is authorized to do so.

14.5 *No waiver* – Failure on the part of Salland to exercise, or any delay in exercising, any right or remedy arising from any Offer, Confirmation or Agreement, or these Terms and Conditions, shall not operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise or the exercise of any other right or remedy arising from any Offer, Confirmation or Agreement, or these Terms and Conditions or by law.

14.6 *Choice of law* – Any Offer, Confirmation or Agreement shall be governed by and construed in accordance with the laws of the Netherlands without regard to the principles of conflict of laws.

14.7 *Dispute resolution* – For the purposes of resolution of each and any dispute that has arisen or might arise out of or in connection with the Offer, Confirmation or Agreement, or any further agreements resulting from the same, the parties shall – or the most diligent party shall – file a request for mediation with the secretariat of the Netherlands Arbitration Institute ("NAI") in accordance with the NAI Mediation Rules. If such request fails to result in a comprehensive resolution of the dispute by execution of a settlement agreement as referred to in Article 7(A) of the NAI Mediation Rules the dispute shall be exclusively submitted to the competent court in Zwolle, the Netherlands.

14.8 *Modifications and changes* – Salland reserves the right to make any amendments or modifications to these Terms and Conditions at any time. Such amendments and modifications shall have effect (i) on all Offers, Confirmations and Agreements referring to such amended or modified Terms and Conditions as from the date of such Offer, Confirmation or Agreement, and (ii) on any existing Agreement 30 (thirty) days from notification of such amendments or modifications by Salland to Customer, unless Customer has notified Salland within such 30 (thirty) days period that it objects thereto.