

Asiga Terms and Conditions of Sale, Service and Technical Support ("Terms and Conditions")

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1. DEFINITIONS

Contract means a contract for sale by Asiga to the Customer of the Products and/or services incorporating these Terms and Conditions.

Consumer Contract means a contract for the acquisition of goods or services as a consumer.

Critical Component means any component of a system used in High Risk Circumstances.

Customer means the person or legal entity identified in Asiga's Quotation or Invoice.

Asiga-branded means hardware products that are marked with the Asiga brand, including all standard components, but does not include:

- (a) software, external devices, accessories or parts added to the Asiga-branded hardware products after they are shipped from Asiga;
- (c) accessories or parts that are not installed in the Asiga factory; or
- (d) Third Party Products that are software and peripherals unless they are included on Asiga's standard price list.

High Risk Activities means use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, medical life support, mass and air traffic control, weapons systems, life-support machines or any other application in which the failure of the Products could lead directly to death, personal injury or severe physical or property damage.

Order Confirmation means formal acknowledgement of Product ordered by Customer, sent by Asiga.

Place of Delivery means the place designated by the Customer and agreed to by Asiga for delivery of Product.

Price means the price as per Asiga Quotation and Order Confirmation and the latter will have precedence.

Products means the products as described in Order Confirmation and may include Asiga-branded products, third party products and Service Offerings.

Service Offerings means the different service options offered by Asiga for the Products or any part of them and for varying periods, as described in Asiga's published literature, including but not limited to Asiga's Invoice and/or Asiga's Service Description.

Service Offerings means the different service options offered by Asiga for the Products (or any part of the Products), as described in Asiga's published literature, including but not limited to Asiga's Invoice and/or Asiga's Service Description.

Standard Warranty means the warranty protection that comes standard with purchases from Asiga, as set out in clause 8 of these Terms and Conditions.

Third Party Products means products other than Asiga-branded.

2. FORMATION OF CONTRACT

2.1 No Contract comes into existence until the Customer's order has been accepted by Asiga and Asiga provides notice of acceptance to the Customer and the Products in the Customer's order are discharged from Asiga's factory to the Customer or the Customer's carrier. Asiga's issuance of an Order Confirmation acknowledging receipt of the order does not constitute acceptance of the Customer's order by Asiga. The Contract is deemed to be concluded at the time and place where the Products are discharged from Asiga's factory premises. The Customer warrants that it is buying for its own internal use only and not for re-sale purposes.

2.2 The Products sold and/or services rendered are subject to these Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by the Customer. The Customer acknowledges that it is aware of the contents of and agrees to be bound by these Terms and Conditions. Neither Asiga's acknowledgement of a purchase order nor its failure to object to conflicting, different, or additional terms and conditions in a purchase order will be deemed an acceptance of such terms and conditions or a waiver of the provisions.

3. ORDERS, PRICE AND PAYMENT

3.1 Unless credit terms have been expressly agreed by Asiga, payment for the Products and/or services must be made in full before physical delivery of Products and/or services.

3.2 The Customer will pay for all applicable shipping and handling charges.

3.3 The Customer will bear all country, provincial, government, state and local sales, use, goods and services, value added, excise, privilege and similar levies/taxes.

3.4 Time for payment is of the essence. Asiga reserves the right to charge interest at the rate of 2% above the London Interbank Offered Rate (LIBOR rate) on overdue accounts.

3.5 While all efforts are made to check pricing and other errors, inadvertent errors do occur from time to time and Asiga reserves the right to decline orders arising from such errors.

4. SOFTWARE

4.1 All software provided is subject to the terms and conditions of the license agreement relating to that software. The Customer acknowledges its obligations to abide by such license agreements. The Customer acknowledges that Asiga does not make any express warranty in relation to any software under these Terms and Conditions of Sale. In addition to any rights the Customer may have under statute, all software is warranted in accordance with the license agreement that governs its use.

4.2 All rights, title or interest in respect of the intellectual property rights in the software remain with Asiga or the licensor of the software at all times.

5. TITLE AND RISK

Title to and risk in the Products passes to the Customer upon discharge of the Products from Asiga's factory premises to the Customer or the Customer's carrier.

6. DELIVERY

6.1 Asiga will discharge all Products “Ex Works” (EXW) to the Customer’s specified shipping address.

6.2 For the efficiency of Asiga's production and fulfilment procedures, it may be necessary for Asiga to deliver the Products by instalments in any sequence. Except as provided in clause 6.4, the Customer may not cancel the Contract where Products are delivered by instalments.

6.3 Any dates provided by Asiga for the delivery of the Products are estimates only and will not form part of the Contract. Actual delivery date will be affected by factors such as clearance of payment, Customer's location and availability of parts for the Products. For non Consumer Contracts, Asiga will not be liable for any delay in delivery of the products and/or services, howsoever caused.

6.4 Customer may cancel an order for Products purchased under a Consumer Contract if Asiga is unable to deliver the Products within a reasonable period from the estimated delivery date.

6.5 Asiga has a policy of on-going Product update and revision. As a result, Asiga may revise and/or discontinue Products at any time without notice.

6.6 Where Products ordered under a Consumer Contract have been revised and/or discontinued, Asiga will supply revised or updated Products with the same or better functionality and performance of the Products ordered. The Customer accepts that Asiga's policy may result in differences between the specification of Products delivered to the Customer and the specification of Products ordered.

7. ACCEPTANCE OF PRODUCTS

7.1 Unless the Customer notifies Asiga to the contrary on the day of delivery and such notification is confirmed in writing within two days, the Products will be deemed to have been accepted by the Customer. The Customer will not be entitled to withhold payment of all or any of the price of the Products whilst any claim is being investigated by Asiga.

7.2 Nothing in clause 7.1 affects a Customer's right to claim against Asiga for a faulty product under Asiga's Standard Warranty or any Extended Warranty, or under their rights under statute.

8. WARRANTY

8.1 Unless specified otherwise and in addition to any rights the Customer may have under statute and subject to this clause 8, Asiga warrants to the Customer that Asiga branded products will be free from defects in materials and workmanship affecting normal use for a period of one year from the invoice date.

8.2 This Standard Warranty does not cover damage, fault, failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, servicing not authorised by Asiga, usage and/or storage and/or installation not in accordance with Product instructions, failure to perform required preventive maintenance, normal wear and tear, fire, flood, war, act of violence or any similar occurrence; Products with missing or altered Service Tags or serial numbers; any attempt by any person other than Asiga personnel or any person authorised by Asiga, to adjust, repair or support the Products and problems caused by use of parts and components not supplied by Asiga.

8.3 Under the Standard Warranty during the one-year period beginning on the invoice date, Asiga will repair or replace Products returned to Asiga's facility. Asiga will return repaired or replacement Products to Customer under “ex works” (EXW) shipping terms. Asiga may decide at its own discretion to pay any return shipping costs.

8.4 Asiga does not give any warranty that Products purchased are fit for any particular purpose.

8.5 The Standard Warranty is given in place of all excludable warranties, conditions, terms, undertakings and obligations implied by statute, common law, trade usage, course of dealing or otherwise including warranties or conditions of merchantability, fitness for purpose, satisfactory quality and/or compliance with description, all of which are excluded to the fullest extent permitted by law.

8.6 The Standard Warranty does not apply to:

- (a) Asiga-branded goods purchased in an auction;
- (b) non-Asiga branded products, supplied by Asiga and forming part of a Product; and
- (c) goods which are not standard Asiga assemblies or configurations as defined on Asiga's published product list.

8.7 Asiga will provide support for non Asiga-branded products purchased under a Consumer Contract. Asiga does not manufacture its non Asiga-branded products, and may not be able to provide repair facilities or spare parts in relation to them. The Customer acknowledges that the reasonable time for Asiga to repair non Asiga-branded products is longer than the reasonable time for the manufacturer to repair the same product.

8.8 Non Asiga-branded products may be accompanied by their manufacturer's standard warranties. The Customer acknowledges that where support is required in relation to non Asiga-branded products it may be more efficient and expedient to seek support under the manufacturer's standard warranties, at least at first instance.

8.9 Under the Standard Warranty, Products presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Products.

9. SERVICE AND TECHNICAL SUPPORT

Asiga will provide general service and technical support to the Customer in accordance with the then-current service and technical support policies in effect. Service and support offerings may vary from product to product. If Customer purchases optional services and support as listed on Customer's invoice, Asiga will provide the optional service and support to Customer in accordance with the then-current terms and conditions in the optional service contract between Asiga and Customer in addition to the Standard Warranty. Asiga may, at its discretion, revise its general and optional service and support programs and the terms and conditions that govern them. Asiga has no obligation to provide service or support until Asiga has received full payment for the Product or service/support contract for which service or support is requested.

10. LIABILITY

10.1 Asiga will not be liable in contract or in tort for any loss or damage suffered and the Customer's rights are limited to those set out in these Terms and Conditions and under statute.

10.2 For goods and services which are not supplied under a Consumer Contract Asiga's total liability in respect of each event or series of connected events will not exceed the total price paid for the purchase of products and/or services under these Terms and Conditions.

10.3 The Customer will indemnify Asiga and keep Asiga fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of these Terms and Conditions.

10.4 Asiga and the Customer agree that Asiga's liability:

- (a) for Products supplied under a Consumer Contract, is governed solely by Consumer Law in the jurisdiction in which the Consumer Contract is formed;
- (b) for Products not supplied under a Consumer Contract does not extend to any incidental, indirect, special or consequential damages arising out of or in connection with the purchase, use or performance of products or services, even if Asiga has been advised of their possibility.

10.5 In the case of Products not supplied under a Consumer Contract, any service response times stated by Asiga in the service contracts are approximate only and Asiga will not be liable for any direct or indirect loss or damage arising from its failure to meet such response times.

10.6 To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or

information issued by Asiga will be subject to correction without any liability on the part of Asiga.

10.7 In relation to goods or services supplied under a Consumer Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Asiga's liability for breach of a guarantee implied into a Contract which cannot lawfully be excluded is limited, at Asiga's option, to:

(a) in the case of Products, the replacement of the Products or the supply of equivalent Products; the repair of such Products; the payment of the cost of replacing the Products or of acquiring equivalent products; or the payment of the cost of having the Products repaired; OR
(b) in the case of services, the supplying of services again; or the payment of the cost of having services supplied again.

11. BACKUP OF DATA

11.1 Products are complex items of equipment that may occasionally fail, due to external causes or internal faults. This failure can result in the loss, corruption, deletion or alteration of software or data (including user-generated data).

11.2 Unless the Customer regularly and continually backs up all data, software and programs, these may be lost or corrupted in the event of failure.

11.3 Customer agrees to regularly and continually back up all data and software stored on the Product or on computers which Product software is installed, and to complete a backup prior to seeking any general service and technical support from Asiga.

12. USE OF PRODUCTS

12.1 Asiga Products are designed for specific applications and purposes to work under certain operating conditions. Customer's use of the Product other than in accordance with any manual, operating instructions, specified operating conditions or any other information provided by Asiga may damage the Product and data stored on it. Such use may adversely affect the Customer's rights.

12.2 The Customer agrees to only use the Product in accordance with any manual and any specified operating conditions.

13. HIGH RISK APPLICATION DISCLAIMER

The Products are not fault-tolerant and are not designed or intended for use in High Risk Activities. Asiga expressly disclaims any express or implied warranty of fitness for High Risk Activities.

14. BUSINESS USAGE

Where Products are bought for business usage the Customer warrants to implement appropriate means and procedures to ensure operational continuity of the business in the event that the Product experiences any performance failures. This may include disaster recovery plans, comprehensive data back up plans and the implementation of redundant systems.

15. FORCE MAJEURE

Neither party will be liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party will be entitled to a reasonable extension of time for the performance of such obligations.

16. EXPORT RESTRICTIONS

The Customer acknowledges that the Products licensed or sold hereunder, which may include technology and software, may be subject to the export control laws and regulations of the country of manufacture and may also be subject to the export control laws and regulations of the country in which the Products are to be used. The Customer agrees to abide by all applicable export control laws and regulations. Under such laws and regulations, the Products purchased may not be sold, leased or otherwise transferred to restricted end-users or to restricted countries. The Customer understands that applicable requirements or restrictions may vary depending on the Products delivered and may change over time and that, to determine the precise controls applicable to the Products acquired, it may be necessary to refer to relevant laws and regulations.

17. TRADEMARKS, COPYRIGHT AND INTELLECTUAL PROPERTY

17.1 Asiga asserts ownership or licensed usage of the trademarks, copyrighted materials and intellectual property contained within Asiga-branded Products in the jurisdictions in which they are discharged. The Customer accepts responsibility for the importation or usage of Asiga-branded Products in other respective countries or jurisdictions.

17.2 Where importation or usage of Asiga-branded Products by the Customer results in infringement of trademarks, copyright or intellectual property in any jurisdiction, Asiga has the right to defend or settle, at its own discretion and expense, any claim brought against the Customer and have sole control over any such actions or negotiations. The Customer will allow Asiga the option of modifying the infringing Products, solely at Asiga's discretion, to render them non-infringing, or refund or replace the Products with comparable products solely at Asiga's discretion.

17.3 The Customer warrants that they will not attempt to reverse engineer or copy any of Asiga's Products or technology.

17.4 Asiga may introduce technological improvements to products at any time without prior notice.

17.5 The Customer shall not distribute copies of any software Products outside their organization or make them available for download by unauthorized parties.

17.6 The Customer shall not re-label or re-brand any of the Products for resale or distribution.

18. GENERAL

18.1 The Customer must not assign or otherwise transfer any Contracts or any of its rights and obligations under these Terms and Conditions whether in whole or in part without the prior written consent of Asiga. Any such unauthorised assignment will be deemed null and void.

18.1 Asiga may, at its discretion, transfer or assign any Contract or any of its rights and obligations under these Terms and Conditions whether in whole or in part to another party.

18.2 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question will not be affected.

18.3 No failure or delay on Asiga's part in exercising any power or right under these Terms and Conditions operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.