



## DELTA-T DEVICES LTD

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# CONDITIONS OF SALE

## Interpretation

1.1 In these conditions:-

**"Authorised User"** any employee, officer, director, contractor or research partner of the Buyer that is authorised by the Buyer to use the DeltaLINK-Cloud Service.

**"Buyer"** the person who accepts a quotation of the Seller for the sale of the Goods and/or Services or whose order for the Goods and/or Services is accepted by the Seller.

**"Goods"** the goods which the Seller is to supply in accordance with these conditions.

**"Conditions"** the standard terms and conditions of sale (and service) set out in this document and includes any special terms and conditions agreed in writing between the Seller and the Buyer.

**"Contract"** the contract for the sale and purchase of the goods and services.

**"Buyer Data"** the data inputted by the Buyer, or the Buyer's Authorised Users, or the Seller on the Buyer's behalf for the purpose of using the Services or facilitating the Buyer's use of the Services.

**"DeltaLINK-Cloud Service"** the service that allows the Buyer to upload data via GPRS or other internet connection from certain data loggers, sensors or supported file formats to DeltaLINK-Cloud (the Seller's data sharing platform).

**"Seller"** Delta-T Devices Limited.

**"Services"** any services which the Seller supplies in accordance with these conditions, including the DeltaLINK-Cloud Service.

**"Software"** any software that is supplied as part of the Goods or Services.

**"Website"** the Seller's website, accessible at [<http://www.delta-t.co.uk/>] and all related sites.

**"Writing"** a written letter, including telex, facsimile, electronic mail and comparable means of communication.

## Basis of the Sale

2.1 The Buyer shall purchase the Goods and/or Services in accordance with any quotation of the Seller in Writing which is accepted by the Buyer, or any order of the Buyer in Writing which is accepted by the Seller in Writing, subject to these Conditions.

2.2 No variation of these conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

## Orders and Specifications

3.1 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (as accepted by the Seller).

3.2 If any alterations to the Goods are made at the request of the Buyer then the Buyer shall indemnify the Seller against any loss or damage of any kind suffered by the Seller as a result of those alterations including loss or damage resulting from any infringement of patent, copyright or other property right.

3.3 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation, unless:

3.3.1 The purchase falls within the scope of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

3.4 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller.

## Price of the Goods

4.1 Quotations for a fixed price shall bind the Seller only if given in Writing and remain open for the period stated in such quotation or in the absence of a stated period for 30 days from the date of the quotation.

4.2 Where no price has been quoted or a quoted price is no longer valid, the price shall be that shown in the Seller's current relevant price list at the time of the Buyer's order.

4.3 The Seller reserves the right to increase the price by giving notice in Writing to the Buyer at any time before delivery to take into account increased costs to the Seller of fulfilling the relevant order.

4.4 All prices are exclusive of Value Added Tax ("VAT") or other applicable sales taxes or duties, which the Buyer shall be additionally liable to pay to the Seller. VAT will be charged at the current VAT rate in the UK (at the time of supplying the order) for Goods delivered to Buyers within the UK.

4.5 Where Goods are delivered to Buyers in another European Union country, VAT will be charged at the current VAT rate in the UK (at the time of supplying the Goods), except where the Buyer supplies its European Union VAT number, in which case no VAT will be charged.

## Terms of Payment

5.1 The Seller shall be entitled to invoice the Buyer for the price of the Goods and/or Services on or at any time after delivery.

5.2 The Buyer shall pay the price of the Goods and/or Services in advance of the delivery of the Goods and/or Services, unless an alternative payment period has been stated on the invoice or agreed in Writing between the Seller and the Buyer.

5.3 If the Buyer fails to make any payment promptly and in accordance with the terms of this Contract the Seller may exercise any of the following rights, either alone or in any combination:-

5.3.1 terminate the Contract;

5.3.2 suspend any further deliveries to the Buyer;

5.3.3 suspend all or part of the Services;

5.3.4 recover any Goods already delivered;

5.3.5 retain all payments already made;

5.3.6 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3% per annum above Barclays Bank Base Rate from time to time.

## Delivery

6.1 Delivery of the Goods and/or Services to Buyers in the UK shall be made by the Seller delivering the Goods and/or Services to the place of delivery in the UK agreed with the Buyer.

6.2 Any dates quoted for delivery of the Goods and/or Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods and/or Services howsoever caused.

6.3 If the Seller fails to deliver the Goods and/or Services for any reason which is within the reasonable control of the Seller, the Seller's liability shall be limited to the excess difference (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those Goods and/or Services not delivered.

6.4 If the Buyer fails to take delivery of the Goods and/or Services or fails to give the Seller adequate delivery instructions at the time of the Order then, without prejudice to any other right or remedy available to the Seller, the Seller may sell the Goods and/or Services at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for any excess or charge the Buyer for any shortfall below the price payable by the Buyer.

6.5 No claim for damage in transit, shortage of delivery or loss of the Goods will be entertained unless the Buyer shall have given to the Seller written notice of such damage, shortage or loss with reasonable particulars thereof within fourteen days of receipt of the Goods or in the case of total loss within seven days of receipt of the invoice or other notification of despatch. The Seller's liability, if any, shall be limited to replacing or repairing such Goods or refunding the price and it shall be a condition precedent to any such liability that the Purchaser shall if so requested have returned the damaged Goods to the Seller within fourteen days of request.

## **Risk and Property**

7.1 This Clause 7 only applies to UK Buyers.

7.2 In the case of Goods and/or Services to be delivered to Buyers in the UK risk of damage to or loss of the Goods and/or Services shall pass to the Buyer at the time when the Seller has tendered delivery of the Goods and the Buyer shall insure them against loss or damage accordingly.

7.3 Notwithstanding the above, the Goods should remain the Seller's property until the Buyer pays the price in full in accordance with the terms of the Contract.

7.4 Until such time as property in the Goods pass to the Buyer, the Buyer shall hold the Goods as a bailee, store them in such a way as they can be identified as the Seller's property and keep them separate from the Buyer's own property and that of any other person.

7.5 Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall hold on trust for and account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible and shall keep all such proceeds separate from any monies or property of the Buyer and third parties.

7.6 Until the property in the Goods passes to the Buyer (and provided the Goods are still in the possession of the Buyer) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

## **Force Majeure**

8.1 If the performance of the Seller's obligations is delayed or hindered by circumstances outside the Seller's control, the following provisions will apply:

8.1.1 the Seller shall as soon as practical give the Buyer notice of the reasons for the delay or hindrance. However, failure to give such notice will not prevent the Seller relying on the remaining provisions of this clause and the Seller will incur no liability or failure to give such notice.

8.1.2 The Seller's duty to perform shall be suspended for as long as the circumstances continue and the type or performance of the Seller's obligations shall be extended by for a time equal to the duration of these circumstances.

## **Warranties**

9.1 Save as set out below the Seller warrants that the Goods will be free from defects arising out of the materials used or poor workmanship for a period of twenty four months from the date of delivery.

9.2 The above warranty is given by the Seller subject to the following conditions:-

9.2.1 the Seller shall be under no liability for any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.

9.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse, alteration or inexpert servicing or repair of the Goods without the Seller's approval.

9.2.3 the Seller shall be under no liability in respect of any defect arising as a result of the Buyer or any third party incorrectly installing any Goods or any products supplied to upgrade the Goods.

9.3 Except as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.4 If the Buyer experiences problems with the Goods it shall notify the Seller (or the Seller's local agent) as soon as they become aware of such problem. Where Goods have been supplied by the Seller in breach of the warranty contained in Clause 9.1 the Seller shall be entitled to discharge its liability for breach of that warranty:-

9.4.1 by supplying faulty parts free of charge; or

9.4.2 by repairing the Goods free of charge at the Seller's premises in the UK

9.5 If the Seller requires that Goods be returned to them from overseas for repair under Clause 9.4 the Seller shall not be liable for the cost of carriage or for customs clearance in respect of such Goods.

9.6 The Seller shall not be liable to supply products free of charge or repair any Goods where the products or Goods in question have been discontinued or have become obsolete.

9.7 The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:-

9.7.1 any breach of these Conditions;

9.7.2 any use made by the Buyer of the Goods or Services;

9.7.3 any resale of the Goods or Services by the Buyer; and

9.7.4 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.

9.8 The Seller shall not be liable to the Buyer, whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation or otherwise for:-

9.8.1 loss of profits;

9.8.2 loss of business;

9.8.3 depletion of goodwill or similar losses;

9.8.4 loss of anticipated savings;

9.8.5 loss of goods;

9.8.6 loss of contract;

9.8.7 loss of use;

9.8.8 loss or corruption of data or information; or

9.8.9 any special, indirect or consequential loss or damage.

9.9 The Seller's total aggregate liability to the Buyer under or in connection with these Conditions in any 12 month period, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall be limited to the total sums paid by the Buyer to the Seller in that 12 month period.

9.10 Nothing in these Conditions limits or excludes the Seller's liability:-

9.10.1 for death or personal injury cause by the Seller's negligence;

9.10.2 for fraud or fraudulent misrepresentation; or

9.10.3 for any other liability that cannot lawfully be excluded or limited.

9.11 The Seller shall not be liable to the Buyer by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control.

9.12 The Buyer agrees to indemnify the Seller against any damage, loss, costs, claims or expenses incurred by the Seller in respect of any claim brought by the Seller by any third party for :-

9.12.1 any loss, injury or damage wholly or partly caused by the Goods or their use;

9.12.2 any loss, injury or damage in any way connected with the performance of this Contract.

## **Intellectual Property and Software**

10.1 The Buyer acknowledges that the Seller or its licensors own all intellectual property rights in the Goods and the Services and no rights are granted to the Buyer in respect thereof except as expressly set out in these Conditions.

10.2 The Seller accepts no liability in relation to any loss, costs or expenses caused over date changes and (without limitation) which arise through use of its software systems with other software, systems or data.

10.3 Software development is a complex activity and the Seller does not warrant that any software it supplies will be free from all defects.

## **DeltaLINK-Cloud Service**

11.1 Subject to and in accordance with these Conditions, the Seller hereby grants to the Buyer a non-exclusive, non-transferable right to use the DeltaLINK-Cloud Service and the Website solely for the Buyer's normal internal business operations or research activities and the right to grant sub-licences to Authorised Users on the same terms.

11.2 The Buyer shall not, and shall procure that its Authorised Users do not:-

11.2.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:-

11.2.1.1 and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

11.2.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

11.2.2 access all or any part of the DeltaLINK-Cloud Service and/or Website in order to build a product or service which competes with the DeltaLINK-Cloud Service and/or Website; or

11.2.3 use the DeltaLINK-Cloud Service and/or Website to provide services to third parties; or

11.2.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the DeltaLINK-Cloud Service and/or Website available to any third party except the Authorised Users of the Buyer; or

11.2.5 attempt to obtain, or assist third parties in obtaining, access to the DeltaLINK-Cloud Service and/or Website other than as provided in these Conditions; or

11.2.6 use the DeltaLINK-Cloud Service:-

11.2.6.1 to send any communications or materials which are offensive, abusive, menacing, obscene, annoying, incite hatred, panic or anxiety or which are otherwise unlawful; or

11.2.6.2 to access, transmit, publish, display, advertise or make available material which infringes copyright or any other intellectual property right held in any country, is obscene or pornographic, contains threats of any kind, is defamatory in any way or breaches confidence, which is illegal or infringes any third party's legal rights whatsoever nature under the laws of any jurisdiction for any reason; or

11.2.6.3 in a way that could damage, disable, overburden, impair or compromise the Seller's systems or security or interfere with other users; or

11.2.6.4 to collect or harvest any information or data from the any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service; or

11.2.6.5 so as to intentionally conflict with any accepted industry guidelines, practices, codes or memoranda of understanding and in any case so as to intentionally cause any impact upon the Seller's or any of the Seller's affiliates'

or service providers' business relations and/or reputation, inclusive of directly promoting in country mobile service tariff offerings; or  
11.2.6.6 in a manner which the Buyer knows and intends will conflict with, compete with, undercut, destabilise or otherwise compromise any of the Seller's or any of the Seller's affiliates' or service providers' current or future services or products supplied to its customers in the British Channel Islands or elsewhere.

11.3 The Buyer shall, and shall procure that its Authorised Users shall:-

11.3.1 comply with the terms of any licence, law or regulation applicable to the use of the DeltaLINK-Cloud Service; and  
11.3.2 comply at all times with any applicable data protection legislation; and  
11.3.3 use all reasonable endeavours to prevent any unauthorised access to, or use of, the DeltaLINK-Cloud Service and/or the Website and, in the event of any such unauthorised access or use, promptly notify the Seller.

11.4 The Seller does not warrant:-

11.4.1 that the Buyer's use of the Services will be uninterrupted or error free;  
11.4.2 that the DeltaLINK-Cloud Service or Website and/or in the information obtained by the Buyer through the Services will meet the Buyer's minimum requirements;  
11.4.3 that there will be a minimum level of availability for its Services, such as a minimum uptime and the Buyer should anticipate periods of unplanned maintenance;  
11.4.4 that the Website will be secure or free from bugs or viruses;  
11.4.5 that internet transmissions are completely private or secure over the DeltaLINK-Cloud Service and/or Website and that any message or information sent using the DeltaLINK-Cloud Service and/or Website may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted; or  
11.4.6 that the DeltaLINK-Cloud Service and/or Website will be free of limitations, delays and other problems inherent in the use of such communication facilities and the Buyer understands that the Seller is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

#### **Buyer Data**

12.1 The Buyer shall own all right, title and interest in and to all of the Buyer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Buyer Data.

12.2 The Seller shall back up the Buyer Data in accordance with its usual archiving procedures for Buyer Data as may be amended by the Seller in its sole discretion from time to time. In the event of any loss or damage to Buyer Data, the Buyer's sole and exclusive remedy shall be for the Seller to use reasonable commercial endeavours to restore the lost or damaged Buyer Data from the latest back-up of such Buyer Data maintained by the Seller in accordance with its archiving procedures. The Seller shall not be responsible for any loss, destruction, alteration or disclosure of Buyer Data caused by any third party.

12.3 The Buyer agrees to the processing by the Seller of the Buyer Data in accordance with the Seller's Privacy Policy available at [<http://www.delta-t.co.uk/privacy-policy.asp>] or such other website address as may be notified to the Buyer from time to time, as such document may be amended from time to time by the Seller in its sole discretion.

12.4 The Seller reserves the right to:-

12.4.1 use the Buyer Data to perform the DeltaLINK-Cloud Service; and  
12.4.2 transfer the Buyer Data to third parties performing services for the Seller.

#### **Insolvency of Buyer**

13.1 This clause applies if:-

13.1.1 the Buyer makes any voluntary arrangement with its creditors (being an individual or a firm) or becomes bankrupt (being a company) or becomes subject to an administration order or goes into liquidation; or  
13.1.2 the Buyer ceases, or threatens to cease to carry on business; or  
13.1.3 the Seller reasonably believes that any of the events listed above is about to occur and notifies the Buyer accordingly.

13.2 If this clause applies, then the Seller shall be entitled to cancel the Contract, or suspend further deliveries without any liability to the Buyer, and if the Goods have been delivered but not paid for, the price shall become immediately due and owing regardless of any previous arrangement.

#### **Export Terms**

14.1 Where the Goods are supplied for export from the UK the provisions of this clause 14 shall apply notwithstanding any other provision of these Conditions.

14.2 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

14.3 The Buyer shall be responsible for complying with any legislation or regulations governing the import of the Goods into the country of destination and for the payment of any duties thereon.

14.4 Unless otherwise specified by the Seller, the Goods shall be delivered by the Seller on a CIP basis inclusive of delivery to destination airport carriage and insurance but excluding customs clearance, local taxes and duty, on-carriage and any other costs applicable in the country of destination.

Unless payment method has been agreed in writing between the seller and the buyer, payment of all amounts due to the Seller shall be made by means of an irrevocable letter of credit, in sterling, confirmed by a UK clearing bank on terms acceptable to the Seller (unless another payment method is specified in Writing by the Seller). All bank charges incurred both in the UK and the country of destination must be paid by the Buyer. The letter of credit shall be issued for such period as the Seller requires and shall be capable of being drawn against by presentation of such documents as are specified by the Seller.

No claim for damage in transit, shortage of delivery or loss of the Goods will be entertained unless the Buyer shall have given to the Seller written notice of such damage, shortage or loss with reasonable particulars thereof within fourteen days of receipt of the Goods or in the case of total loss within seven days of receipt of the invoice or other notification of despatch. The Seller's liability, if any, shall be limited to replacing or repairing such Goods or refunding the price and it shall be a condition precedent to any such liability that the Purchaser shall if so requested have returned to any such liability that the Purchaser shall if so requested have returned the damaged Goods to the Seller within fourteen days of request.

#### **General**

15.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business.

15.2 Any notice required to be given under this Contract shall be deemed to be served in the following circumstances:-

15.2.1 If sent by pre-paid first class post to the party to whom it is given at its registered office or at his last known address, in which case it shall be effective on the third day after posting;

15.2.2 If sent by fax, telex or e-mail it shall be effective when the Sender receives confirmation of receipt.

15.3 No waiver by the Seller of any breach by the Buyer shall be considered as a waiver of any subsequent breach.

15.4 If any provision of these 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 Conditions and the remainder of the provisions in question shall not be affected thereby.

15.5 The Contract shall be governed by the laws of England and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

15.6 The Buyer agrees that in its dealings with the goods it shall comply with the Seller's Policy Statement from time to time. The current version of that Policy Statement is:-

"We aim to manufacture and sell instruments for use in work beneficial to the environment and directly related to human and animal welfare. As a matter of conscience, we reserve the right not to sell our instruments to people or institutions involved in military work, tobacco research, environmentally destructive practices and factory farming".