

## 1. INTERPRETATION

1.1 In these Conditions unless the context otherwise permits:-

**"Authorised Representative"** means a person whose job title is that of Director or Managing Director or a person who holds the office of director.

**"Consumer"** shall mean any natural person who in the contract with the Customer is acting for purposes that are not related to his trade, business or profession.

**"Customer"** means the person, firm, company, entity or organisation with whom IM contracts for the sale of Products and/or supply of Services.

**"the Conditions/ these Conditions"** means the standard terms and conditions of sale set out in this document or such replacement standard terms and conditions notified to Customer as are in force at the date of the Contract and which at that date appear on IM's web site at <https://uk.ingrammicro.eu/> and/or which are available on request at IM's principal trading address at CBXII, 406-432 Midsummer Boulevard, Milton Keynes MK9 2EA, England..

**"the Contract"** means any contract for the purchase and sale or other supply of Products and/or the supply of Services by IM to a Customer.

**"Electronic Means"** means any electronic means including without limit on the Web, by EDI or XML, or Inside Line®.

**"IM"** means Ingram Micro (UK) Ltd (registered in England number 1609968) with its registered office at CBXII, 406-432 Midsummer Boulevard, Milton Keynes MK9 2EA, England.

**"Personal Data"** is information about an identified or identifiable individual as defined in the EU General Data Protection Regulation (the "GDPR").

**"Products"** means any hardware and software, whether packaged, licensed or as a service, and instalments of the Products or any parts of or for them, sold by IM to a Customer.

**"Services"** means any services supplied or performed by IM or its authorised service providers to the Customer.

**"Special Order Products"** shall mean Products that are classified in IM's current comprehensive product listing as special order products or have been ordered specifically by Customer or configured to Customer's specifications.

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

1.3 The Conditions shall apply to sales of all Products including Special Order Products ordered for shipment to or within the UK mainland. IM reserves the right to apply supplemental or other terms for Products to be shipped by IM outside the UK mainland.

1.4. Without prejudice to the application of these Conditions additional and more detailed terms may apply for certain Products and suppliers including specific terms applicable to special prices offered by suppliers through IM ("Special Terms") and additional terms may apply with respect to IM's delivery and other aspects of its business. Any additional terms and the updated Special Terms will be made available on IM's web site [www.ingrammicro.co.uk](http://www.ingrammicro.co.uk). It is the Customer's responsibility to be aware of and adhere to the additional and Special Terms as current from time to time, and by ordering Products from IM the Customer agrees to be bound by additional and Special Terms.

1.5 The Conditions do not create any obligations for IM to sell or for the Customer to purchase. The Conditions can be terminated by either IM or Customer at any time without liability to the other party other than each party's liability to the other party arising out of Contracts entered into prior to termination. The obligations with respect to processing of Personal Data and non-disclosure of confidential information shall survive termination of these Conditions and any Contracts.

## 2. BASIS OF THE SALE

2.1 All Contracts between IM and a Customer shall be governed by these Conditions (and, where applicable, any other terms and conditions pursuant to Clause 1.3 and/or Clause 1.4) to the exclusion of any other terms and conditions not accepted in writing by an Authorised Representative of IM, including without limit any terms on or referred to in any Customer purchase order. In the case of orders placed by Electronic Means which refer to any terms and conditions of the Customer IM's automatic taking on to its system of such order shall amount to a rejection of the Customer's terms and conditions and an offer to supply the Products ordered on the basis of these Conditions. No variation to these Conditions shall be binding unless agreed by letter signed by an Authorised Representative of IM. It is the Customer's responsibility to be aware of the Conditions as current from time to time but IM will use best efforts to notify Customer of any material changes to the Conditions before they become applicable. In addition to any acceptance of these Conditions by signing IM's account application form, the Customer's acceptance of these Conditions shall also be made (in respect of the first Contract and all subsequent Contracts) either by (1) Customer providing a purchase order to IM or (2) Customer accepting Products or Services from IM, whichever occurs first.

2.2 No employee or agent of IM other than an Authorised Representative has any authority to make any representation at all concerning Products or Services and an Authorised Representative has no authority to make such representation other than by letter (an "authorised representation") and accordingly Customer agrees that in entering into any Contract it does not rely on any unauthorised representation and Customer agrees it shall have no remedy in respect of any unauthorised representation (unless made fraudulently).

### **3. CUSTOMER IDENTIFICATION**

3.1 In placing an order including by Electronic Means Customer may utilise one or a combination of account name, account number and other forms of identification including password or other code issued to Customer (together and individually "Customer's Identification" or "Customer Identification").

3.2 It is the Customer's responsibility to keep the Customer's Identification confidential. Customer has the sole responsibility for its Customer Identification. Customer shall immediately inform IM in case of loss of password or in case of any abuse or attempted abuse of Customer password or other Customer Identification. Customer agrees that Customer is entirely responsible for use of Customer's Identification and that it is Customer's responsibility to have in place security measures and procedures to ensure use of its Customer Identification only by authorised personnel for authorised purposes.

3.3 Customer agrees that IM is entitled to rely absolutely on any orders placed on IM which have utilised Customer's Identification and to deliver as directed by such orders and to invoice and be paid in respect of such orders.

3.4 Customer agrees that any order placed on IM including by Electronic Means mentioning or utilising Customer's Identification is a valid and binding purchase order.

3.5 Customer acknowledges that IM cannot guarantee the security of the Internet and the possibility of interception or corruption of data transmitted from Customer to IM using correct Customer Identification, and that IM is nonetheless entitled to rely on data transmitted in the form it is received at IM.

3.6 IM shall have no liability towards the Customer should the Customer's customer have placed an order on the Customer for fulfilment by IM or a corresponding order is placed by the Customer on IM, where such orders are found by IM or Customer to be fraudulent. Neither IM nor its carriers shall be liable to Customer should IM or the carriers have delivered Products in accordance with Customer's instructions received before the order is released for shipment, and in no event shall IM and its carriers be liable to Customer for any penalty or claim should the Products have been delivered in accordance with any instruction by the Customer or its customer after the order is released with respect to any changes to the order or an order cancellation.

### **4. INFORMATION, DATA PROTECTION AND CONFIDENTIALITY**

4.1 In furtherance of the business relationship between IM and Customer, it may be necessary or desirable for either party to disclose to the other certain non-public business and/or technical information that is either marked "Confidential" or by its nature should reasonably be considered confidential (the "Confidential Information"). Each party will protect Confidential Information from unauthorized disclosure or access by using the same degree of care it takes to protect its own confidential information which in no event shall be less than reasonable care. Each party's Confidential Information may be disclosed by the other party to those employees, affiliates or agents of such other party who have a need to know and an obligation to comply with the confidentiality terms herein. The confidentiality obligations herein will not apply to information which is or becomes publicly available, is already in the other party's possession prior to the time a party gains access, is independently developed by a party or is rightfully obtained from third parties, or as may be required to be disclosed by law or in connection with dispute resolution. Customer acknowledges that it has read and understood IM's Privacy Statement available at <https://corp.ingrammicro.com/privacy-statement.aspx> and agrees at all times not to do anything that would be a breach of the Privacy Statement.

4.2 All Product pricing, description, availability and related information ("Information") provided by IM, in any form, is the property of IM or its suppliers. IM hereby grants Customer a limited, non-exclusive, non-transferable license to use the Information for its internal use only for the purpose of Customer's purchases and sales of Products sold by IM to it. IM shall be entitled to stop the provision of Information at any time without notice. Customer agrees to hold in confidence and not to directly or indirectly use, reveal, report, publish, disclose or transfer to any other person or entity any of the Information or utilise the Information for any purpose except as permitted herein. IM makes no warranty, either express or implied on the Information or its accuracy. All Information is provided to Customer "as is." If IM provides Information to Customer by Electronic Means, Customer agrees to update such Information regularly to ensure its accuracy. Specifically but without limitation Customer is not entitled to utilise Information for any purpose other than in the normal course of business of a reseller and is not entitled to use, reproduce or display the Information in any way, which in IM's opinion; (1) would enable it to be identified as information obtained from IM (2) would enable comparison of the Information with other suppliers' information relating to Products or (3) could be damaging to IM's business interests.

4.3 IM and Customer acknowledge and agree to comply with applicable data protection and privacy legislation ("Data Protection Laws") including the GDPR when acting as controller or processor (as applicable) and using, handling, disclosing, transferring, sharing or processing any Personal Data of their respective employees. Any Personal Data shared and processed as part of these Conditions is confidential Information and is subject to the confidentiality obligations set out in these Conditions. IM and Customer each agrees to hold in confidence and not to directly or indirectly use, reveal, report, publish, disclose or transfer to any other person or entity the other party's confidential Information or utilise such Information for any other purpose than the business with the other party. Customer agrees that IM may disclose to its suppliers and other interested parties certain details about IM's business with Customer including to credit rating agencies and insurers, and of IM's sales of the respective suppliers' Products to the Customer. Customer agrees that IM may use Customer data, including any Personal Data, for the purpose of marketing and sales of Products to Customer, and Customer agrees to IM's collection, storage and processing of such data for this purpose. Customer agrees to receive Product information and promotions and other communications from IM by e-mail and other communication tools until Customer opts out from receiving such communications.

4.4 If IM receives Personal Data about Customer's customers for the purpose of direct delivery of Products or Services or for any other or similar purpose, IM acknowledges that Customer is the data controller of and retains all rights, title and interest in such Personal Data. Customer represents and warrants that any Personal Data provided to IM has been collected with adequate customer consent or is otherwise legally permitted or required to disclose your Personal Data to IM. To the extent IM processes such Personal Data on behalf

of Customer, IM shall: (a) only process the Personal Data in accordance with Customer's instructions and for no other purposes than those determined by Customer; (b) make sure its employees having access to Personal Data are subject to confidentiality obligations and to take reasonable steps to ensure the reliability of its staff having access to the Personal Data processed as part of providing the Services under this Agreement and that such staff is subject to; (c) take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to the Personal Data; (d) inform as soon as possible Customer of any Data Subject request, third party notices, breach of security or loss of Customer's Personal Data and cooperate with Customer in order to impede any consequences thereof and ensure compliance with the applicable Data Protection Laws; (e) provide reasonable assistance to allow Customer to comply with its obligations under the Data Protection Laws; (f) no later than upon termination of the Conditions and end of the business relationship, cease all processing of Customer's Personal Data and shall delete or, upon Customer's request, return, all files containing the Personal Data, provided that IM may retain Personal Data to comply with legal requirements; (g) not subcontract any processing of Personal Data to a third party other than to IM's group companies without the express prior written consent of Customer, whose consent shall not be withheld if IM ensures compliance by such third party with Data Protection Laws; (h) not transfer, disclose or otherwise permit access to the Personal Data to any third party outside the European Economic Area or Switzerland for any purpose, without Customer's prior written consent, except where it is strictly necessary in order to fulfil its obligations to Customer or comply with any legal obligation; and (i) upon reasonable request and IM's discretion, either certify that the processing of Personal Data is in compliance Data Protection Laws or make available to Customer necessary information to demonstrate that its processing of Personal Data is compliant with its obligations hereunder and applicable Data Protection Laws.

## **5. ORDERS AND SPECIFICATIONS**

5.1 The Customer shall be responsible to IM for ensuring the accuracy of the terms of any purchase order, and shall be sole responsible for its selection of Products or Services on any purchase order and the fitness of the Products or Services for any particular purpose. IM disclaims any liability for any errors in the Customer's purchase order.

5.2 IM reserves the right to make any changes to the Contract due to changes in the specification of the Products or Services made by its suppliers or changes that are required to conform with any applicable safety or other statutory requirements. These changes will be duly notified to the Customer. The Customer cannot cancel or reschedule the Contract provided the changes do not alter the material terms of the Contract. For other types of changes, the possibility of cancellation will be subject to IM's discretion and conditions.

5.3 IM is under no obligation to accept the withdrawal of an order or the cancellation of a Contract which has been accepted by IM. If IM agrees to accept the Customer's withdrawal of any order or the cancellation of a Contract such agreement will only be effected by means of letter, fax or email signed or sent by an Authorised Representative of IM.

5.4 Notwithstanding any other terms of these Conditions it is agreed that the provision or display of Services and Product pricing and other Information (as defined in Clause 4.1) by IM to Customer does not amount to an offer by IM to sell Product or supply Services at that price or on any other terms. Supply of such Information is only an invitation to treat. An order by the Customer for Product or Services shall be the offer.

5.5 Notwithstanding any acceptance by IM of Customer's offer to purchase Products or Services, if there for any reason has been a material or obvious pricing error by IM, IM shall be entitled within 30 days of its acceptance of such offer or delivery of the Products or commencement of the Services to either invoice the Customer the true and correct list price (not exceeding the prevailing market price at wholesale level) of the Product or Services at the date of order or, if the Customer shall prefer, upon notice to Customer cancel the order and collect the mispriced Product or cease supplying the Services at IM's expense and credit the Customer for the price paid and any charges (e.g. price and freight) invoiced by IM. If the true price is lower than the quoted price, IM will invoice Customer the lower true price for the Products or Services. Customer should make reservations against pricing errors in its applicable sales terms and allow for Customer to cancel its sales order to its customers if notified about a pricing error from IM's side.

5.6 Orders for direct shipment to Customer's customers or Special Order Products may require the Customer's acceptance of additional terms including prepayment of the order and will be subject to additional fees. The Customer is responsible for the accuracy of all information provided about its customers including but not limited to name and ship-to address. IM shall not be liable to the Customer for any loss or damage arising from inaccurate or erroneous information if IM has relied upon such information or shipping instructions provided by the Customer. If the Customer requests a change to the ship-to customer name or address after IM's acceptance of the order such change shall be made in writing by an authorised officer of the Customer and IM shall not act on any verbal instructions by the Customer or anyone acting on the Customer's behalf. IM shall have no obligation to monitor or verify whether the Customer or any orders placed by Customer are the subject to any fraudulent or other criminal activity or attempt by the Customer's customers or any third party.

5.7 IM will set minimum order levels and charge additional fees for any order below such levels. Current minimum order levels can be found on IM's web site [www.ingrammicro.co.uk](http://www.ingrammicro.co.uk).

5.8 IM may cancel, and shall be under no obligation to accept or fulfil, an order if Products or Services are in short supply from its suppliers or if the suppliers' prices have increased to such a level that the fulfilment of the order would result in IM selling the Products or Services at a loss or with lower than normal sales margins.

## **6. PRICES**

6.1 Subject to the provisions of Clause 5.5 and Clause 6.2:-

6.1.1 Prices for Products in IM's stock ready to be shipped will be established at the time the order is accepted by IM. Prices for Services will be the prices quoted by IM for the duration of the Service period. When the price for Services is based on future

usage or performance, IM reserves the rights to adjust its prices should IM's service provider's prices or the conditions under which the Service prices were quoted become subject to change.

6.1.2 If the Customer places an order for Products not in stock at the time of order (a "Backorder") or the Customer places an order for scheduled delivery, such orders shall be irrevocable and the price for such Products shall be the price established at the time the Backorder or scheduled delivery is accepted by IM.

6.2 Notwithstanding any of the foregoing IM reserves the right to increase its prices after acceptance of a Backorder or scheduled delivery (including subscription Services) due to an increase in its supplier's price to IM or an increase in direct costs to which IM becomes subject (including without limit costs resulting from currency fluctuation) but IM shall only increase its price by such level as is necessary to reflect such increases.

6.3 All prices quoted by IM exclude the cost of transport from IM's warehouse to the Customer's receiving point, as well as configuration, fulfilment and other services provided by IM.

6.4 All prices and charges are exclusive of any applicable Value Added Tax, which the Customer will be additionally liable to pay to IM. Unless otherwise stated prices exclude any copyright levies, waste and environmental fees, and similar charges that IM by law or statute may or shall charge or collect upon resale.

6.5 If Customer is offered special pricing for certain orders and such pricing is made available to IM from its suppliers ("Special Bids"), the Customer shall adhere to the applicable Special Terms and other terms and conditions of such Special Bids and agrees to indemnify IM for any claims made against IM by the suppliers for Customer's non-compliance with the supplier's terms and conditions. Customer agrees to pay any service fees charged for IM's pass-through of Special Bids and other supplier driven benefits the Customer may receive, including any marketing funding, price protection and individual rebates, and agrees that pass-through and payment of such benefits will be subject to IM having received the benefits from its supplier. The Special Terms may oblige the Customer to comply with certain requirements including but not limited to (i) the sale of the Products only to specifically named end-users; (ii) the disclosure of end-user information to IM and its suppliers for the purpose of end-user verification; and (iii) the submission of copies of end-user invoices, end-user purchase orders or end-user shipping documents to IM and its suppliers. Subject to the Special Terms applicable for the individual suppliers and Products, non-compliance with the Special Terms may entitle IM and/or its suppliers to reclaim and invoice the Customer in full for all discounts, rebates and other special price conditions granted to the Customer under the special price.

6.6 It is the Customer's responsibility to be aware of all Special Bids activity and the expiry of Special Bids. The Customer shall not submit any purchase orders on IM with prices that do not reflect valid and non-expired Special Bids, and IM shall not be liable to Customer for any variance between IM's invoice value and the value of expired Special Bids.

## **7. TERMS OF PAYMENT**

7.1 Unless IM shall have previously agreed in writing with the Customer that the Products or Services shall be supplied on credit, payment for the Products or Services shall be made in full by the Customer with the Customer's order or on delivery or collection of the Products or commencement of the Services, as determined by IM.

7.2 Where IM has agreed to supply the Products or Services on credit Customer shall pay the price of the Products or Services within 30 days of the date of IM's invoice notwithstanding that title to the Products has not passed to the Customer. Customer may take advantage of an early payment discount subject to meeting the conditions detailed on IM's web-site [www.ingrammicro.co.uk](http://www.ingrammicro.co.uk). Customer shall not withhold, deduct or set off from its payments to IM any amount owed by IM to Customer without IM's prior written approval. Invoices will be dated the day of dispatch of the Products or on completion or commencement (if reoccurring fees) of the Services. IM shall be entitled at its absolute discretion to alter payment terms (other than on concluded Contracts) and withdraw or alter any credit limit granted at any time with notice. If Customer exceeds its credit limit or fails to qualify for continued credit terms, IM may, at its sole discretion, delay subsequent shipments or require prepayment until IM determines that Customer is once again qualified to receive credit terms. Customer shall not set off or withhold any amount due to IM against its receivables without IM's prior written approval, and shall in the event of a bona fide dispute, pay any undisputed part of the invoice.

7.3 The time of payment shall be of the essence. If the Customer fails to make a payment on the due date then without prejudice to any other right or remedy available to it IM shall be entitled to:-

7.3.1 cancel the Contract and/or suspend any further deliveries or suspend any Services to the Customer; IM may at its discretion grant Customer a reasonable cure period before cancelling the Contract due to non-payment;

7.3.2 appropriate any payment made by the Customer to such of the Products as IM may think fit (notwithstanding any purported appropriation by the Customer); and

7.3.3 collect and repossess any unpaid Products in accordance with section 9 below.

Customer accepts that IM will exercise its statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if IM is not paid according to agreed credit terms.

7.4 Customer shall provide IM's Credit Department with copies of its annual financial statements and its quarterly statements within sixty (60) days of the close of the fiscal period to which they relate. Customer shall inform IM promptly if there is a change of ownership or control of Customer or its direct or indirect parent company (excluding changes of ownership of the shares of a publicly quoted company which do not result in a change in control of the company's board of directors or other governing board), a management buy-

out, or all or a substantial part of the Customer's assets are sold or otherwise transferred to any non-affiliated company or member of the Customer's group of companies.

7.5 In the event Customer intends to sell, assign, factor or otherwise transfer any book debt owed to Customer or to enter into any form of invoice discounting arrangement Customer agrees to inform IM in writing prior to entering into any such arrangements.

7.6 It is IM's policy not to accept cash and cheques as a method of payment for Products or Services. If IM accepts payment by credit or debit card, the cards used to pay IM must be issued to Customer and not to any individual deemed a consumer, and IM reserves the right to charge fees to the Customer for card payments to the extent permitted by law.

7.7 If IM issues a credit note and the Customer does not utilise the credit note within a period of 12 months from the date of its issue IM shall have the right to cancel the credit note and the Customer shall not be entitled to a replacement or any payment in respect of the same.

7.8 Any credit balance shown on a Customer's statement of account issued by IM which remains on the statement for a period of 12 months will be forfeited by the Customer who shall no longer have any rights to the same.

7.9 IM reserves the right to issue and send all invoices to the Customer in an electronic format, and the Customer accepts to receive all invoices electronically including receipt of invoices by e-mail. IM may without notice to or consent from Customer sell, assign, factor or otherwise transfer any book debt owed by Customer (accounts receivable) or enter into any form of invoice discounting arrangement with any third party.

7.10 IM shall have no obligation to perform or supply, and Customer shall have no right to require, any Service ordered by the Customer or any Product subject to subscription and future delivery in the event the Customer or its customers fails to pay any Service or subscription fees when they become due.

## **8. DELIVERY**

8.1 Delivery of the Products shall take place Free Carrier IM's warehouse (FCA (Incoterms 2010) for international shipments). Absent specific instructions from the Customer IM will select the carrier. Unless the Customer shall have notified IM in writing within 5 working days of the date of IM's invoice that the Products have not been received or that the Products were damaged then delivery shall be deemed to have taken place in accordance with the Contract and the Customer shall not be entitled to raise any claim of short or mis-shipment or damage to the Products.

8.2 The Customer shall upon receipt of the Products sign the delivery note (proof of delivery) and be responsible for complying with the applicable shipping requirements of IM and its carriers details of which are made available at IM's web-site ([www.ingrammicro.co.uk](http://www.ingrammicro.co.uk)). The Customer's sign-off on IM's delivery shall be at carton level. IM shall be entitled to assume that any person who both reasonably appears and claims to have authority to accept delivery who signs a note in respect of the Products on behalf of the Customer or the Customer's customer (if IM has agreed to deliver direct) does in fact have the authority.

8.3 Any dates quoted or scheduled for the delivery of Products or commencement of Services are approximate only and IM shall not be liable for any delay in delivery of the Products or performance of Services howsoever caused.

8.4 Partial delivery of Products is allowed unless otherwise mutually agreed by both parties. Failure by IM to deliver the rest of the Products or partially perform Services shall not entitle the Customer to treat the order as a whole as repudiated.

8.5 Where IM has agreed to ship Products or perform Services direct to the Customer's customer any such shipment or performance shall be deemed to be delivery to the Customer and any refusal by the Customer's customer to accept delivery or performance shall be deemed to be a refusal by the Customer. It shall be the Customer's obligation to report any delivery discrepancies in accordance with Clause 8.1 and comply with Clause 8.2 above when Products are shipped direct to the Customer's customer or when the Products are forwarded by the Customer to its customers.

8.6 The Customer shall bear all costs associated with the unjustified refusal of Products and Services. If the refusal is made on the grounds that the order was wrongly placed (i.e. wrong product, wrong pricing, etc.) and the refusal is accepted by IM, IM reserves its right to charge accordingly additional fees for return transportation and administrative expenses related thereto, and original carriage costs will not be reimbursed. IM may charge Customer a refusal fee should the Customer's customer unjustifiably refuse to take delivery of a shipment from IM.

## **9. RISK AND TITLE**

9.1 Risk of damage to or loss of Products shall pass to the Customer or its customer at the time of delivery or if the Customer unjustifiably fails to take delivery of Products the time when IM has tendered delivery of the Products.

9.2 Notwithstanding delivery and the passing of risk of the Products or any other provisions of these Conditions, title to the Products shall not pass to the Customer until IM has received in cleared funds payment in full of the Products

9.3 Until such time as title to the Products passes to the Customer the Customer shall:-

9.3.1 hold the Products as IM's fiduciary agent and bailee; and



9.3.2 keep the Products separate to those of the Customer and third parties; and

9.3.3 keep the Products properly stored protected and insured, and identified as IM's property; and

9.3.4 accept that Products may be labelled as being IM's property until IM is paid.

9.4 Until such time as the title in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) IM shall be entitled at any time to require the Customer to deliver up the Products to IM and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.

9.5 The Customer's right to possession of the Products or performance of Services shall terminate immediately if:-

9.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act 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 (whether voluntary or compulsory) 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 a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

9.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between IM and the Customer or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

9.5.3 the Customer encumbers or in any way charges any of the Products.

9.6 Customer is entitled to resell the Products in the ordinary course of business. Customer is not able or entitled to offer the Products as collateral or otherwise grant a charge in respect of the Products until title has passed to the Customer in accordance with these Conditions. Customer shall inform its customers that title to the Products is retained by IM until Customer has paid IM, and shall ensure that its customer has agreed with the Customer that any unpaid Products shall be returned to IM in the event of Customer's failure to pay IM's invoices when they fall due. The Customer shall upon IM's request provide IM with all details and information necessary for IM to collect the Products.

## **10. WARRANTIES AND LIABILITY**

10.1 IM does not manufacture the Products (or where the Products comprise computer software does not publish or license the software) and subject to the conditions set out below in this Clause 10 IM only sells the Products with the benefit of the manufacturer's warranty. Warranties are offered from the manufacturer on a pass-through basis to the end user or directly by the manufacturer to the end user.

10.2

10.2.1 IM will accept liability for defective Products only to the extent that IM is entitled to make a claim under the manufacturer's Dead on Arrival (DOA), warranty or other defective goods terms and actually obtains from the manufacturer a refund credit repair or replacement in respect of the defective Products. Processing of these defective Products shall be made according to the manufacturer's procedure and the instructions set out in Clause 10.4 below. IM cannot and shall have no obligation to accept a return of and/or grant a credit for Product not compliant with the manufacturer's procedures.

10.2.2 IM 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 IM's or the manufacturer's or publisher's instructions (whether oral or in writing) misuse or alteration or repair of the Products without IM's approval.

10.2.3 IM shall be under no liability under the above warranty if the total price of the Products has not been paid.

10.3 All warranties, conditions or other terms implied by common law or statute, or otherwise in connection with the sale or supply of goods or goods or services (save, in the case of goods, as to title) are excluded to the fullest extent permitted by law.

10.4 Any claim by the Customer which is based on a defect in the quality or condition of the Products shall be notified to IM's Customer Services Department. Upon notification of any such claim by the Customer IM shall either notify the Customer whether the policy of the manufacturer of the Products is to deal with the Customer direct (in which case the Customer shall deal with the manufacturer direct provided IM gives sufficient details to enable the Customer so to do) or shall provide the Customer with an RMA number (in which case the Customer shall return the Products to IM in their original UNMARKED packaging together with details of the RMA number and the Customer's name and address). If IM issues an RMA number to the Customer IM shall not send any replacement Products to the Customer until after the original Product has been returned to IM. This Clause 10.4 shall only apply to Products the Customer is entitled to return to IM as provided in these Conditions.

10.5 IM shall not be liable to the Customer for any economic or financial loss or damage (including without limit any loss of profits, loss of revenue, liabilities incurred by the Customer to third parties relating to Products delivered or Services rendered by IM, or additional expenses incurred or the cost of time spent) or any consequential, indirect, or special loss or damage costs expenses or other claims

for consequential compensation whatsoever (including without limit loss of or damage to data or loss of goodwill) incurred or suffered by the Customer and in every case howsoever caused or arising (and whether caused by the negligence of IM its employees or agents or otherwise).

10.6 IM's liability for direct loss or damage arising from damage to tangible property for which IM is liable shall be limited to the VAT exclusive price of the relevant Product or Service. In no event shall IM's liability exceed the maximum amount of IM's insurance cover.

10.7 Nothing in these Conditions shall in any way exclude or limit any liability IM may have for death or personal injury caused by its negligence.

10.8 IM shall not be liable to the Customer or be deemed to be in breach of any Contract by reason of any delay in performing or any failure to perform any of IM's obligation in relation to the Products or Services if the delay or failure was due to any cause beyond IM's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond IM's reasonable control:-

10.8.1 Act of God explosion flood tempest fire or accident;

10.8.2 act of terrorism war or threat of war sabotage insurrection civil disturbance or requisition;

10.8.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental or parliamentary or local authority;

10.8.4 import or export regulations or embargoes;

10.8.5 strikes lock outs or other industrial actions or trade disputes (whether involving employees of IM or a third party);

10.8.6 difficulties of IM's supplier in obtaining raw materials labour fuel parts or machinery.

10.9 If Customer is selling Products or Services purchased from IM to a Consumer the Customer shall ensure the Consumer is given sufficient and appropriate information and descriptions as to the Product's or Services' fitness for the purpose for which the Products or Services are normally used and any particular purpose the Consumer has required or agreed with the Customer. Customer shall not remove or replace any labelling, user manuals, components or other material from the Product as supplied by the manufacturer or IM, and shall not in its advertising, marketing or labelling provide any public statements on the specific characteristics of the Products or Services on behalf of IM, the manufacturer or their representatives.

10.10 Customer accepts liability for the Products' conformity with the Customer's Consumer contract ('conformity' as defined by the EU Directive 1999/44/CE of May 25, 1999 and legislation implementing the Directive), and Customer shall not offer any warranties or representations to the Consumer as to the quality, fitness for purpose of the Products without the manufacturers' express consent. Customer agrees to hold harmless and indemnify IM and the manufacturers against any loss, costs, and damages caused by the Customer's acts or omissions, and non-compliance with the obligations set forth in Clause 10.9, Clause 10.10 and Clause 10.11. If Customer is held liable to the Consumer caused by a Product's lack of conformity resulting from an act or omission by the manufacturer or IM, or any other intermediary, Customer may by law or statute be entitled to pursue remedies against IM, the manufacturer or any other person liable in the contractual chain. Provided Customer is legally entitled to pursue such remedies and IM is held liable by a competent court of law, IM's liability to Customer shall be limited to an amount corresponding to the Customer's original purchase price of the Product or Service giving rise to the claim by the Consumer.

10.11 Should the Product warranties offered by the manufacturers or IM under these Conditions be restricted compared to the guarantees the Consumer is entitled to under law, the Customer agrees to take sole responsibility towards the Consumer for the excess liability and waives any claim it may have against IM in respect of such excess.

10.12 The Products are subject to the intellectual property rights of IM's suppliers (i.e. the Product manufacturers). Customer is not authorised to alter, cover, or remove any reference to such intellectual property rights on the Products, and shall adhere to any guidelines and restrictions provided by IM's suppliers if the Customer is granted a right to use such rights in the marketing and resale of Products. IM shall have no duty to defend, indemnify or hold Customer harmless from and against any or all claims brought against Customer or damages and costs incurred by Customer arising from the infringement of a third party's intellectual property rights, except to the

extent IM's supplier is offering such defence or indemnification to IM on a pass through basis. Upon threat of claim or claim of infringement, IM may, at its option (i) procure the right to continue using any part of Product, (ii) replace the infringing Product with a non-infringing Product of similar performance, or (iii) refund to the Customer the purchase price paid by the Customer for the infringing Product. Notwithstanding any other terms or conditions to the contrary IM's liability for infringement of intellectual property rights under these Conditions shall not exceed the Customer's purchase price for the infringing Products.

## **11. RETURNS AND REPAIRS**

11.1 Except for Special Order Products, which are expressly excluded from the terms of this Clause 11 and cannot be returned under any circumstances, if IM agrees to accept the return of any Products (other than for the purpose set out in Clause 10 above) or agrees to carry out repairs to other products which have not been purchased from IM or agrees to repair Products which are out of warranty the Customer shall not send the same to IM unless they are accompanied by an RMA number previously advised by IM's customer services department and a copy of the relevant sales invoice and are sent in their original packaging. IM may at its discretion either

replace a returned Products with a Product similar to the returned Product if the returned Product has been discontinued or is in short supply by the suppliers, or credit the returned Product at the lower of the original purchase price and the then current list price.

11.2 The Customer shall notify IM within 5 working days of any delivery discrepancies or Product damages, other than for the purposes set out in Clause 10. If IM issues a returns number (RMA), Products must be returned to IM within 5 working days of the date thereof. IM reserves the right to refuse return of damaged Products should the manufacturer's seal be broken or compromised and charge the Customer return freight.

11.3 If IM has agreed to carry out repairs or to replace Products (or any parts thereof) other than for the purpose set out in Clause 10 above the Customer irrevocably authorises IM to carry out such repairs or provide such replacements as shall place the Products in proper working order.

11.4 IM shall accept no liability for any damage to or loss in transit of Products returned to IM whether under this Clause 11 or under Clause 10 above.

11.5 IM does not offer stock rotation rights (or sale or return rights) and Customer shall have no expectation of such rights being granted. If IM has agreed to accept the return of Products, other than for the purposes set out in Clause 10 above or for the purpose of carrying out any other repair or replacement, the Products must be returned at Customer's expense in their original packaging and in a clean resalable condition, and will be subject to a re-stocking fee at IM's discretion, failing which IM will refuse to accept the same and the Customer shall remain liable for the price thereof. Credit for such returns will be at the price invoiced for the returned Products or the then current price, whichever is the lower.

11.6 Details of IM's returns process and terms can be found on [www.ingrammicro.co.uk](http://www.ingrammicro.co.uk) and Customer agrees to comply with this process and abide to the terms when returning any Product to IM.

## **12. INSOLVENCY OF CUSTOMER**

12.1 If:-

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

12.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer; or

12.1.3 the Customer ceases or threatens to cease carrying on business; or

12.1.4 IM reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;

then upon the happening of any of the above, without prejudice to any other right or remedy available to IM, IM shall be entitled to cancel the Contract and/or suspend any further deliveries or services under the Contract without any liability to the Customer and if the Products have been delivered and not paid for then the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **13. EXPORT RESTRICTIONS**

13.1 Customer acknowledges that certain Products are subject to export and other resale restrictions. If Customer delivers the Products to any customer who may use the Products outside the United Kingdom, United States or the European Union or EFTA countries, Customer acknowledges and shall advise its customers that some Products are controlled for resale or export by the U.S. , the EU and/or EU/EFTA member state bodies and such Products may require authorization prior to resale or export. Customer agrees that it will not export, re-export, import, or otherwise dispose of Products, or any direct products thereof, in violation of any dual use restrictions and export control laws or regulations of the U.S., the EU or any EU/EFTA member state. Customer warrants that it will not resell, export or re-export any Products with knowledge that the Products will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Customer has obtained prior approval from the U.S. Department of Commerce, the EU or the competent EU/EFTA member state's government agency. Customer further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or resell any Products to companies or individuals restricted from purchasing Products including those listed on the Sanctioned Parties List published by the U.S. Department of Commerce and similar lists issued by the EU or EU countries.

13.2 The restrictions set out herein change from time to time. If the Customer has any questions regarding its obligations under U.S. export regulations the Customer should contact the Bureau of Export Administration, U.S. Department of Commerce, Office of Export Licensing, Washington DC, USA (202) 377 4811 or the local U.S. Consulate. Information concerning restrictions applicable to export from the EU and any intra-EU sales restrictions on dual use items and license requirements can be obtained from the European Commission or the UK Export Control Organisation.

13.3 It shall be the Customer's responsibility to comply with all export and other resale restrictions. Upon request the Customer agrees to reaffirm in writing its compliance and its intentions to comply with applicable export and restricted user and uses regulations.



13.4 Customer acknowledges that certain Product manufacturers have limited the distribution of Products to the countries of the European Economic Area and Switzerland ("Territory") and agrees that it shall not export, deliver or otherwise dispose of Products to any customer located outside the Territory, unless Customer has obtained the explicit approval of the Product manufacturer. IM shall have no duty to assist Customer in delivering Products outside the Territory, and any sales or deliveries outside the Territory including the sale of Products subject to technical and legal requirements in a non-Territory destination, shall be at the Customer's sole risk.

## **14. SERVICES**

14.1 If agreed in any particular case IM will provide configuration Services to Customer. Configuration Services will be at the price agreed at the time the order is accepted. The Customer shall be solely responsible for the accuracy of its order, the specification of the components and their configuration and for ensuring that the configured product specified is satisfactory for the purposes for which it is required including without limit that it has sufficient overall functionality, and will support, be compatible and inter-operable with any hardware, software or middleware with which it is intended to operate.

14.2 Configuration Services will have a warranty of 14 days from the date of shipment to the Customer. IM's sole liability (and the Customer's sole remedy against IM) in respect of any defective Services for which IM is responsible shall be the repair by IM or at IM's option replacement of the Product on which the Services have been performed. (If any alleged defect shall be attributable to defect in Product the provisions of Clause 10 shall apply). Claims in respect of defective Services must be made within 21 days of the date of delivery of the configured Product.

14.3 IM may offer other Services to Customer including direct fulfilment and billing, installation and support services, storage and consolidation, and other logistics services. Such Services will be provided under these Conditions in addition to specific terms agreed upon in writing with Customer.

14.4 With respect to professional, managed or cloud Services purchased from IM, the following terms will apply:

14.4.1 Use of Subcontractors. IM will use its own employees and/or subcontractors to provide services. Designation and management of employees and subcontractors will be at IM's sole discretion, and use of subcontractors will not require Customer's consent.

14.4.2 Use of Services. Customer agrees to indemnify and hold IM harmless from any liability, costs or damages arising out of claims or suits by third parties who have received the right to access the Services.

14.4.3 Security. Should Customer's or its customers' data be lost directly due to the gross negligence or wilful misconduct of IM or IM's subcontractors, IM will use commercially reasonable efforts, at its expense, to assist the Customer or its affected customer to restore the affected data; provided, however, that IM's obligations pursuant to this section are subject to the Customer or its affected customer maintaining practices and standards used in well-managed operations with regard to the backup of their respective data and the use of corporate enterprise quality anti-virus and virus protection tools with regard to Customer's and Customer's customers' systems. Notwithstanding the aforesaid, IM shall have no liability and no duty to assist Customer or its customers with respect to loss and recovery of data in the event IM's or the Service provider's invoices have not been paid or IM or the Service provider terminates the Services due to Customer's or its customers' non-payment of said invoices; any assistance by IM shall be at will and subject to payment of IM's service fees. This clause sets out IM's sole obligations and Customer's exclusive remedies with respect to loss of data.

14.4.4 Warranty. IM DOES NOT WARRANT THAT THE SERVICES, EXCEPT AS SET FORTH IN THE RESPECTIVE SERVICE DESCRIPTION, WILL MEET CUSTOMER'S OR CUSTOMER'S CUSTOMERS' REQUIREMENTS OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ASSUMES THE RESPONSIBILITY TO TAKE ADEQUATE PRECAUTIONS AGAINST DAMAGES TO ITS OPERATIONS OR ITS CUSTOMER'S OPERATIONS THAT COULD BE CAUSED BY DEFECTS, INTERRUPTIONS, OR MALFUNCTIONS IN THE SERVICES.

14.4.5 Limitation of Liability. CUSTOMER AGREES THAT THE LIABILITY OF IM FOR DIRECT DAMAGES RELATED TO ANY MANAGED SERVICES OR CLOUD SERVICES ARISING UNDER THESE CONDITIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE NET AMOUNT PAID TO IM BY CUSTOMER FOR THOSE SERVICES WHICH ARE THE SUBJECT OF THE CLAIM DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE.

## **15. MISCELLANEOUS**

15.1 Customer is not allowed for any purpose whatsoever to use IM's logos and trademarks without IM's prior written approval from an Authorised Representative.

15.2 Customer understands that Products and Services supplied by IM are intended for Customer's resale only and not for Customer's internal use. IM shall have no liability to Customer as end user of the Products, and Customer shall indemnify IM against any liability, loss or damage (including indirect or consequential losses) incurred or suffered by IM as a result of Customer's use of the Products as end user including any liability imposed on IM by the Product manufacturers.

15.3 Customer agrees to comply with its obligations as "distributor" under the Waste Electric and Electronic Equipment Regulations 2006 including the take back of household WEEE and the information to users in private households. Customer shall have no right to return any non-household WEEE to IM or its compliance system, and shall indemnify IM against any costs incurred by IM if such WEEE

is returned to IM. If the Customer's registered address or ship-to address is in a country other than the United Kingdom, the Customer shall be deemed the producer in such country and assume full responsibility as producer under that country's WEEE legislation including the obligation to report imports and pay any applicable WEEE fees.

15.4 IM's Code of Conduct governs the conduct by IM's associates and includes inter alia a prohibition on receipt and solicitation of gifts, gratuities, entertainment and other courtesies to and from customers unless certain conditions are met. Customer agrees to observe this policy when conducting business with IM. A copy of IM's Code of Conduct is available on [www.ingrammicro.com](http://www.ingrammicro.com) or upon request.

15.5 The Customer agrees to comply with the UK Bribery Act 2010 and corresponding legislation applicable in the jurisdictions the Customer conducts its business (e.g. the U.S. Foreign Corrupt Practices Act). The Customer shall not make any direct or indirect payment, offer to pay, or authorization to pay, any money, gift, promise to give, or authorization of the giving, of anything of value to any government official or politician, or the immediate family of any such official or politician, for the purpose of influencing acts or decisions of the government or such individual in order to assist, directly or indirectly, Customer or IM in obtaining or retaining business, or securing an improper advantage. The Customer's commitment to comply with the Bribery Act 2010 and other anti-bribery and corrupt practices legislation shall also extend to Customer's dealings with IM and its suppliers, and the Customer's customers and any other commercial parties.

15.6 The Customer shall not engage in deceptive, misleading, illegal, or unethical practices that may be detrimental to IM or the manufacturers of the Products, nor shall the Customer make any representations or warranties to its customers concerning the Products outside the scope of the warranties offered by the manufacturers without IM's prior express written authorisation, or make any representations or warranties to its customers that the Products are designed or licensed for use in circumstances where the failure of the Products is likely to result in significant risks to health or safety, where fail-proof delivery of time-specific information is required, or in otherwise hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems. The Customer shall pass on to its customers all Product information including any restrictions applying to the Products and any terms and conditions pertaining to the licensing of software included in the Products.

## **16. GENERAL**

16.1 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 registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

16.2 No waiver by IM of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.3 If any provision of these Conditions is held by any 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.

16.4 These Conditions and any Contract shall be governed by the laws of England and the Customer submits to the exclusive jurisdiction of the English Courts.

\* \* \*