

## **1 DEFINITIONS AND INTERPRETATIONS**

### **1.1** In these Conditions:

“Seller”	Means Embedded Results Ltd and ANY subsidiary, division or trading unit of Embedded Results Ltd including Kanda.com
“Buyer”	Means the person firm or company so described in the Order;
“Conditions”	Means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any varied or special terms and conditions agreed in writing between Seller and the Buyer;
“Contract”	Means the contract of the sale and supply of the Goods and/or the supply and performance of the Services subject to these Conditions;
“Goods”	Means the Goods (including any instalment of the Goods or any part of them) described in the Order;
“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 (currently Incoterms 2000). Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions 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.
“Ex works”	Ex works (EXW) means Ex Works <i>Aberystwyth</i> , United Kingdom;
“Order”	Means any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller for the supply of Goods or performance of Services, including web site orders;
“Price”	Means the Price of the Goods and/or the charge for the Services;
“Services”	Means the services (if any) described in the Order;
“Specification”	Includes any plans, drawings, data, chemical formula or process or other technical requirements or information including the Seller’s Specification Manual relating to the Goods or Services agreed between the parties;
“WEEE”	Waste Electrical and Electronic Equipment
“Historic WEEE”	WEEE placed on the EU market before August 2005
“New WEEE”	WEEE placed on the EU market after August 2005

## **2 GENERAL BASIS OF SALE**

- 2.1** These Conditions apply to all Contracts for sale of Goods and/or performance of Services by the Seller.
- 2.2** The placing of an Order by the Buyer for the Goods and/or Services shall constitute acceptance of these Conditions notwithstanding any other terms and conditions subject to which any quotation by the Seller is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer.
- 2.3** No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller’s authorised representative.
- 2.4** No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.5** The Buyer acknowledges that all advice, instructions or recommendations of the Seller rely and are dependent upon all the information and technical background given to the Seller by the Buyer.
- 3** Where the Buyer does not specify a particular process or End-Use, the Seller will not be liable for any defect or failure of the process or entitle the Buyer to withhold payment.
- 3.1** The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable Specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or Services pursuant to clause 2.5 or otherwise within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2** The quantity, quality, description, functionality, facilities, functions, capacity and description of the Goods and/or Services shall, subject as provided in these Conditions, be as specified in the Order and any applicable Specification as set out either in the Seller’s web site or any documents referred to in the Order. In the event of conflict, preference will be given to the Seller’s web site.
- 3.3** All drawings, illustrations or any product literature or other publications of the seller must be regarded as approximations only.
- 3.4** Any Specification supplied by the Seller to the Buyer in connection with the Contract, together with all intellectual property rights in the Specification, shall be the exclusive property of the seller. The Buyer shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Buyer, or as required for the purpose of the Contract. Upon request of the Seller the Buyer will return to the Seller any documents (or other media) in or upon which any part of the Specification has been supplied by the Seller and shall not retain copies thereof.
- 3.5** If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a Specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with any claim for infringement of any intellectual property rights of any other person which results from the Seller’s use of the Specification so submitted by the Buyer.
- 3.6** The Seller reserves the right to make any changes in the Specification of the Goods and/or Services which are required to conform with any statutory or other regulatory requirements applicable to the Goods and/or Services.
- 3.7** If the Seller agrees to provide Services at the Buyer’s premises or where the Buyer has contracted with the Seller to provide the Services at the premises of a third party all references to the Buyer’s premises in the Contract shall be deemed to be references to the premises where the Services are to be provided
- 3.8** 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, costs, damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.9** No order that has been accepted by the Seller may be changed or altered by the Buyer except with the agreement in writing of the Seller.

## **4 PRICE OF THE GOODS**

- 4.1** The Price shall be the Seller’s quoted price. The Price quoted is valid for 30 days only, after which time they may be altered by the seller without giving notice to the Buyer.
- 4.2** The seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller, any change in delivery dates, quantities or the Specifications which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

**4.3** Except as otherwise stated under the terms of the Order and unless otherwise agreed in writing between the Buyer and the Seller, the Price is given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than ex works at the Seller's premises, the Buyer shall be liable to pay all charges incurred by the Seller in effecting delivery of the goods to the agreed place.

**4.4** The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination.

## **5 TERMS OF PAYMENT**

**5.1** Unless otherwise stipulated in writing by the seller, payment shall be made prior to delivery of the Goods pursuant to Clause 6 by payment into such bank account as the Seller may notify to the Buyer in writing or by other payment method.

## **6 DELIVERY**

**6.1** Unless otherwise agreed in writing between the Buyer and the Seller or shipping option is selected on the website the Goods shall be delivered ex works.

**6.2** Where the Seller agrees to deliver the Goods otherwise than ex works, delivery shall be effected by the Seller in accordance with the Incoterm Delivered Duty Unpaid (DDU).

**6.3** Where required the Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

**6.4** Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any early or late delivery of the Goods however caused.

**6.5** Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

**6.6** If the Seller fails to deliver the Goods (or any instalment) the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the Price of the Goods.

**6.7** If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any Force Majeure or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the seller, the Seller may:

**6.7.1** Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

**6.7.2** Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price under the Contract.

**6.8** Any charges quoted for delivery of the Goods including transport, packaging and insurance are approximate only and the seller shall not be liable for any changes to the charges quoted however caused.

## **7 RISK AND PROPERTY**

**7.1** Risk of damage to or loss of the Goods shall pass to the Buyer:

**7.1.1** In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

**7.1.2** In the case of Goods to be delivered otherwise than ex works at the Seller's premises, in accordance with the Incoterm Delivered Duty Unpaid (DDU)

**7.2** The property in the Goods shall not pass to the Buyer until the seller has received in cash or cleared funds payment in full;

**7.2.1** Of the Price of the goods

**7.2.2** Any and all charges incurred by the seller in effecting delivery of the goods to the agreed place and

**7.2.3** All other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

**7.3** Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

**7.4** Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

## **8 WARRANTIES**

**8.1** The Seller warrants that the Goods will correspond with the Specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery for items manufactured by the Seller and a minimum of 3 months for other items, depending on the manufacturer's warranty, which will be used to determine the period. Your statutory rights are not affected.

**8.2** The above warranty is given by the Seller subject to the following conditions:

**8.2.1** The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

**8.2.2** 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 or alteration or repair of the Goods without the Seller's approval;

**8.2.3** The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if any amounts as set out in Clause 4 have not been paid by the due date for payment;

**8.2.4** The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee given by the manufacturer to the Seller.

**8.3** The Seller will not be liable for any loss whether direct or indirect or consequential or loss of profit or any damage as a result of:

**8.3.1** Any inaccurate or insufficient information or technical background given to the Seller;

**8.3.2** Any failure to comply strictly with the instructions, advice or recommendations given to the Buyer by the Seller;

**8.3.3** Any use or application of the Goods for any purpose other than those detailed in the Specification or advised by the seller; or

**8.3.4** Any failure to comply with any applicable legislation or any guidelines issued by the Health and Safety Executive or other appropriate regulatory authority current at the time of use of the Goods by the Buyer or any of its employees, agents or sub-contractors.

- 8.4** Any parameters given in respect to the performance of the Goods are based on the design parameters set out in the Specification and the Seller will not be liable for any failure of the Goods to achieve these parameters unless the operating conditions for the Goods are the same as set out in the Specification and where applicable all chemical and or other regenerants must be commercially pure
- 8.5** Subject to the conditions set out in clause 10 the Seller warrants that any Services to be performed will be performed with reasonable skill and care.
- 8.6** It is understood that the Seller is not an insurer and insurance (if any) shall be obtained by the Buyer, and that amounts payable to the Seller under the Contract are based upon the value the Goods and/or Services to be provided hereunder and the scope of the Seller's liability as set forth herein.
- 8.7** Subject as expressly provided in these Conditions, and except where the Goods and/or Services are sold to a person dealing as a consumer (within the meaning of UK Legislation in force at the date when the Contract is made ), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.8** Where the Goods are sold under a consumer transaction (within the meaning of UK Legislation in force at the date when the Contract is made) the statutory rights of the Buyer are not affected by these Conditions.
- 8.9** Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the Specification shall be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure.
- 8.10** Where any valid claim in respect of any of the Goods and/or Services which is based on any defect in the quality or condition of the Goods and/or Services or their failure to meet specification is notified to the Seller in accordance with these Conditions and provided the Goods are returned to the Seller's premises, the Seller will at its option either replace the Goods (or the part in question) and/or Services free of charge or refund to the Buyer the Price of the Goods and/or Services (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.11** Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer or the performance of the Services, and the entire liability of the seller under or in connection with the Contract shall not exceed the Price, except as expressly provided in these Conditions.

## **9 INTELLECTUAL PROPERTY INDEMNITY**

- 9.1** If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes any intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall reimburse the Buyer against all reasonable loss and damages awarded against or incurred by the Buyer in connection with the claim provided that the Seller is given full control of any proceedings or negotiations in connection with any such claim and the Buyer shall give all assistance to the Seller as it may require and take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

## **10 BUYERS INDEMNITY**

- 10.1** The Buyer shall indemnify the Seller and keep it indemnified for the duration of the Contract against all injury (including death) to any persons and all loss and/or damage as a result of any act, default or negligence by the Buyer and its employees or agents (other than the Seller or its sub-contractors) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

## **11 INSOLVENCY OF BUYER**

- 11.1** If the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation or the Seller reasonably apprehends that any of the events mentioned above is about to occur then the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **12 GENERAL**

- 12.1** The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 12.2** Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that party as its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.3** No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4** 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 provision in question shall not be affected thereby.
- 12.5** The laws of England shall govern the Contract and its performance, and the Buyer agrees to submit to the jurisdiction of the English court.

## **13 EU WEEE REGULATIONS**

- 13.1** Household or consumer customers in the European Union (EU) should dispose of WEEE separately from the general waste stream in accordance with the interpretation of the WEEE regulations in their member state.
- 13.2** Non-Household customers may return New WEEE to the Seller or dispose of the WEEE in accordance with the regulations in the Buyer's member state. The Buyer shall be responsible for the cost of delivery of the WEEE to the Sellers premises and the Seller shall be responsible for the environmentally sound disposal of the WEEE.
- 13.3** Non-Household customers may return Historic WEEE on a one-for-one and like-for-like basis with purchases of New WEEE. The Buyer shall be responsible for the cost of delivery of the WEEE to the Sellers premises and the Seller shall be responsible for the environmentally sound disposal of the WEEE.

If any clause in this contract is deemed to be invalid for any reason this shall not be cause to make any other part of the contract invalid.

In the event of any dispute the law of England and Wales shall apply and any action shall take place under the jurisdiction of the courts of England and Wales