



CIVCOM's Terms And Conditions

This **Terms and Conditions of Sale and Software License** (collectively "Agreement") constitute the entire agreement between Civcom Devices & Systems Ltd., ("CIVCOM") and you ("Customer"). CIVCOM will not be bound by any terms of Customer's quotation, order, or order terms. No form of acceptance except CIVCOM's written acknowledgment sent to Customer, or CIVCOM's commencement of performance shall constitute valid acceptance of Customer's order. Any such acceptance is expressly conditioned on assent to the terms hereof and the exclusion of all other terms. Customer shall be deemed to have assented to the terms hereof, whether or not previously received, upon accepting delivery of Products (as defined herein) shipped by CIVCOM. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms hereof.

1. **Products:** "Products" or "Product" shall mean any products identified on CIVCOM's proposals, quotations, or current standard products. Alterations to Products that CIVCOM deems necessary to comply with specifications, changed safety standards, or governmental regulations, to make Products non-infringing with respect to any intellectual property or other proprietary interest or to otherwise improve a Product(s) may be made at any time by CIVCOM without prior notice to, or consent of Customer, and such altered products shall be deemed fully conforming.

2. **Orders:** Customer shall purchase Products by issuing written purchase orders signed by an authorized representative of customer, indicating specific Products, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and any other special instructions. Any contingencies or additional terms contained on such orders are not binding upon CIVCOM. All orders are subject to acceptance by CIVCOM.

3. **Pricing:** All prices are (a) firm for thirty (30) days from the date of quotation, unless specified otherwise in the quotation (b) EXW ("Ex-Works"; shipping costs and risk of loss from the shipping dock onwards are the responsibility of Customer) CIVCOM factory or any Contract Manufacturer's locations designated by CIVCOM and (c) exclusive of taxes, duties, handling, and all other charges that are the responsibility of Customer. All sales are final. Title to Products shall pass from CIVCOM to Customer or its affiliated forwarding agent upon delivery at CIVCOM's or Contract Manufacturer's docks.

4. **Terms of Payment:** Upon credit approval by CIVCOM, payment terms shall be net thirty (30) days from the date of shipment, payable in U.S. dollars. CIVCOM reserves the right, in its sole discretion, to require alternative payment terms, including a letter of credit or payment in advance. If at any time Customer is delinquent in payment of any invoice or otherwise in breach of this Agreement, CIVCOM may, at its sole discretion, withhold shipments (including partial shipments) of any order or require Customer to prepay for further shipments. All payments not received when due shall be subject to an additional charge of one and one half percent (1.5%) per month of the unpaid amount or the maximum rate permitted by law, whichever is less, until the date of payment. Customer has no set-off rights. Customer grants CIVCOM a security interest in Products purchased under this Agreement to secure payment for those Products purchased and agrees to execute any financing statements requested by CIVCOM to perfect its security interest.

5. **Performance and Shipping:** Products performance and shipping dates are approximate and the failure to perform or ship on such dates shall not be considered a breach by CIVCOM. Delivery shall be deemed made upon transfer of possession to CIVCOM's docks or any Contract Manufacturer's dock locations designated by CIVCOM. All claims for shortage of Products delivered or for incorrect charges must be presented to CIVCOM within fifteen (15) days after receipt of the particular shipment of Products or orders shall be deemed fully complete. Unless given written instruction, CIVCOM shall select an independent carrier on behalf of Customer.

6. **Cancellation:** Customer may not cancel, terminate, suspend performance of, or issue a hold on any Customer order, in whole or in part, without the prior written consent of CIVCOM, which consent, if given, shall be upon terms that will compensate CIVCOM for any loss or damage.

7. **Limited Product Warranty:** Notwithstanding any provision to the contrary, CIVCOM's sole and exclusive obligations are to Customer only for any replacement Products (other than Software, as defined and warranted below) made by CIVCOM and sold hereunder are to, at CIVCOM's discretion, (i) repair returned Products, or (ii) provide replacement Products, at CIVCOM's sole option, for Products that have been returned to CIVCOM under the RMA procedure (defined below) and which, in the reasonable opinion of CIVCOM, are determined to be defective in workmanship, material, or not in compliance with the applicable product specifications and have failed under normal use on or before twelve (12) months from the date of original shipment. Products repaired or replaced under warranty are only warranted for the greater of the period of time remaining in the original warranty or thirty (30) days. The warranty does not cover Products that are experimental, prototypes, used in field trials, damaged, disassembled, modified, misused, used in applications that exceed specifications or ratings, neglected, improperly installed, damaged as result of other equipment not supplied under this Agreement or otherwise used in hazardous activities.

8. **Software License and Warranty:** For software developed by CIVCOM and contained in Products and all related documentation (collectively "Software"), CIVCOM grants Customer a non-exclusive license to use Software only with operation of single Products. Such license is transferable only with the transfer of ownership of Products in which it is used. Customer shall not manufacture, modify, reproduce, copy, reverse engineer, decompile, disassemble, or create derivative works of Software.

CIVCOM warrants that Software, under normal use and service as originally delivered to Customer, will function substantially in accordance with the functional description set out in Products specifications and/or user manuals supplied with Software for a period of ninety (90) days from the date of shipment. CIVCOM's sole liability and Customer's sole remedy for a breach of this Software warranty shall be CIVCOM's good faith efforts to rectify the nonconformity. This warranty does not apply if failure of Software has resulted from accident, misuse, abuse, misapplication, or modification.

9. **Intellectual Property Indemnification:** CIVCOM will defend and hold Customer harmless against any claims, legal actions, and other expenses in connection with any claims that Products or Software infringes or violates a United States intellectual property right of any third party ("Claim"), on the condition that Customer notifies CIVCOM promptly of the Claim and gives CIVCOM sole control of the defense and negotiations for its settlement or compromise. If Customer is, or may become, prohibited from use of Products or Software by reason of an actual or anticipated Claim, CIVCOM will use its reasonable efforts to (a) obtain for Customer the right to use Products or Software, or (b) replace or modify such Product or Software so that it is no longer subject to a Claim but performs substantially the same functions in an equivalent manner. If it cannot do so, CIVCOM will refund to Customer an amount paid in respect of Products or Software (determined by depreciating the fee paid on a straight-line basis over three years). CIVCOM will have no liability for any Claim based on any use, modification of, or combination including Products or Software. THIS SECTION STATES THE ENTIRE RESPONSIBILITY OF CIVCOM CONCERNING CLAIMS AND WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10. **Limitation of Liability:** Except for the warranties stated herein for customer, no warranty, condition, or representation, express, implied, oral or statutory, is provided to customer or any third party, including, without limitation, any warranty, condition or representation: (a) of merchantability, fitness for a particular purpose, satisfactory quality, or arising from a course of dealing, usage, or trade practice; (b) that, except as provided herein, products or software will be free from infringement or violation of any rights, including United States Intellectual Property Rights of third parties; or (c) that the operation of the software will be uninterrupted or error free. This disclaimer and exclusion shall apply even if the express warranties fail their essential purpose. Customer's sole and exclusive remedies hereunder and the only liability of CIVCOM is expressly limited to the terms of this agreement.

CIVCOM shall not be liable to customer, or any third party, for any special, consequential, incidental, exemplary, or indirect costs or damages, including without limitation, loss of data, production, or profit arising from any cause whatsoever, regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise, even if CIVCOM has been advised of the possibility of such costs or damages. In no event shall the total cumulative liability of CIVCOM exceed the amount paid to CIVCOM for products from which such liability arose during the twelve (12) month period preceding the date of the most recent claim.

Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, in such states CIVCOM's liability is limited to the full extent permitted by law.

11. **Rights In Intellectual Property:** All rights, title, and interest in and to any inventions, discoveries, improvements, methods, ideas, computer and other apparatus programs, derivatives and related documentation, other works of authorship fixed in any tangible medium of expression, mask works, or other forms of intellectual property, whether or not subject of statutory protection, which are made, created, developed, written, conceived or first reduced to practice by CIVCOM solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed under an order or this Agreement including any Copyrights or Moral Rights relating thereto, shall belong to and be the sole and exclusive property of CIVCOM. Customer shall not reverse engineer all or any portion of Products or Software nor allow or assist others to do so. Further, Customer shall not to remove, alter, erase, deface, or cover over any markings on Products or its packaging.

12. **Return Material Authorization Procedures:** CIVCOM will only accept Products returned under the CIVCOM Return Material Authorization process ("RMA"). Customer shall obtain an RMA number from CIVCOM prior to returning Products, and return Products prepaid and insured to CIVCOM to the EXW point. Products that have been returned to CIVCOM but that are found to meet the applicable specification and not defective in workmanship and material shall be subject to CIVCOM's standard examination charge in effect at the time, which shall be charged to Customer. Where Products are returned without an itemized statement of claimed defects, CIVCOM will not evaluate Products but will return them to Customer at Customer's expense.

13. **Export Restrictions;** Nuclear Technology and Life Support Systems: Customer shall obtain all licenses, permits, and approvals required by any government and shall comply with all applicable export laws of Israel and other countries including rules, policies, and procedures of the applicable governments and other competent authorities. Customers will indemnify and hold CIVCOM harmless for any violation or alleged violation by Customer of such laws, rules, policies, or procedures.

Customer also certifies that neither Products nor technical data supplied by CIVCOM under this Agreement will be sold or otherwise transferred to or made available for use by, or for, any entity that is engaged in the design, development, production, or use of nuclear, biological, or chemical weapons, missile technology, or life support systems. This Section shall survive termination or expiration of the Agreement, or transferal to any third party without CIVCOM's knowledge or permission.

14. **General Terms:**

14.1 The validity, interpretation, and performance of this Agreement shall be governed by and construed under the applicable laws of the state of Israel as if performed wholly within the state and without giving effect to the principles of conflict of laws. The parties specifically disclaim the application the United Nations Convention on Contracts for the International Sale of Goods.

14.2 CIVCOM shall not be liable for any delay or failure in performance whatsoever due to acts of God, earthquakes, shortage of supplies, transportation difficulties, labor disputes, riots, war, fire, explosion, epidemics, or any other occurrences beyond CIVCOM's reasonable control or due to unforeseen circumstances.

14.3 A party ("Terminating Party") may, on giving notice to the other party, terminate this Agreement on written notice to the other if the other party fails to remedy a breach of any material obligation under this Agreement within 30 (thirty) days after receiving notice thereof from the Terminating Party. Notwithstanding the aforesaid, each of the parties hereto may, upon minimum 90 day written notice to the other party, terminate this Agreement in whole, not in part. If this Agreement is terminated, the parties will continue to be liable for any obligations arising from or liabilities accrued or executed prior to termination. In addition to any other remedies, CIVCOM may seek injunctive relief in respect of any breach of these this Agreement by Customer. Notwithstanding the foregoing, Sections 4, 7, 8, 9, 10, 11, 13 and 14 shall survive the termination of this Agreement.

14.4 Waiver by CIVCOM of any provision in this Agreement must be in writing and shall not be deemed to be a waiver of such provision in the future or of any other provision.

14.5 Customer shall hold confidential and shall not use, disclose, or permit other to use any confidential information identified as such in writing or orally by CIVCOM or information, which Customer knows or ought to reasonably know is confidential, proprietary or trade secret information of CIVCOM, including, without limitation, trade secrets embodied in Software or Products.

14.6 Neither this Agreement nor any rights under this Agreement, other than monies due or to become due, shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of CIVCOM. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

14.7 In the event that any of the terms of this Agreement, apart from payment, become or are declared to be illegal by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.

14.8 Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

14.9 CIVCOM neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for CIVCOM with regard to CIVCOM services or Products.

14.10 This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, and there are no understandings, agreements, representations, conditions, warranties, or other terms, express or implied, which are not specified herein. This Agreement may only be modified by a written document executed by authorized representatives of CIVCOM and Customer.