

# Cimbian UK Ltd. Terms and Conditions of Sale

- 1. DEFINITIONS**  
Company: CIMBIAN UK Ltd.  
Customer: The person, firm or company to whom a quotation is addressed or whose order is accepted by the Company.  
Contract: The Customer's order, once accepted by the Company's acknowledgement of order.  
Price: Quotations are exclusive of VAT and carriage and insurance and in UK pounds sterling (GBP) unless otherwise shown.  
Goods: All articles sold to the Customer, including hardware, software, documentation and services.  
Materials: Items purchased from suppliers for inclusion into the Goods.  
Design: Foundation Technology flowing from accumulated Comy know-how.  
Development: The application of Design to create production information including Tooling, Patterns, Test Software, Circuit Diagrams, Parts Lists and all parts and information required to produce the Goods.  
Engineering Specification: A document describing the Physical, Electrical, Mechanical, Environmental, Health and Safety criteria or performance of the goods.  
General Specifications: Specifications, drawings, particulars or weights and dimensions.  
Quotations: Quotations are valid for 30 days but the Company reserves the right to vary, amend or modify quotations.
- 2. GENERAL CONDITIONS**  
(a) All orders are accepted subject to these Terms and Conditions of Sale.  
(b) No variations to the Terms and Conditions of Sale are allowed, unless specifically authorised by an Officer of the Company in writing. Only an Officer of the Company is authorised to accept, confirm or vary any order or make any representation, promise or warranty on behalf of the Company.  
(c) The Contract price shall be adjusted to take account of any increase in costs incurred by the Company as a result of any unauthorised variation or from any loss incurred on a suspension of work as a result of any fault of the Customer.  
(d) Any provision of these Conditions held by a court to be unenforceable shall be deemed severable from the rest which shall remain valid and binding.  
(e) The waiver by the Company of a breach of any of the Conditions herein shall not in any way prejudice or affect the later enforcement of the term and shall not be deemed a waiver of any subsequent breach thereof.  
(f) Any licence required to enable the Customer to acquire or the Company to sell or supply to the Customer shall be obtained by the Customer.  
(g) The Company reserves the right to assign or sub-contract the Contract or any part thereof.  
(h) This Contract shall be governed by the laws of England.  
(i) This Contract is subject to Incoterms 2000.
- 3. CONFIDENTIALITY**  
Without the previous written consent of the Company, the Customer shall not use (other than for the purposes of fulfilling the Contract) or disclose to any other person, any information relating to the Goods or to the Contract. The Customer shall ensure that its employees enter into similar undertakings with the Customer and shall indemnify the Company against all losses, damage or expenses arising out of a breach of this clause.
- 4. ASSIGNMENT**  
The quotation or Contract to which these are the Terms and Conditions of Sale is personal to the Customer who shall not, without the Company's prior written consent, assign any rights or obligations hereunder to any other person, firm or company.
- 5. GENERAL DESCRIPTIVE MATTER**  
All General Specifications, submitted by the Company are approximate and intended to give a general idea of the Goods described therein and shall not form part of the Contract. Unless specified or approved, the Company undertakes no responsibility for sites, foundations, framework or support for machinery or for compliance with any local by-laws or statutory regulations or for the fulfilment of any special requirements the Customer is obliged to observe.
- 6. PERFORMANCE**  
(a) Where performance figures, tolerance or characteristics have not been specifically warranted by the Company's Engineering Specifications, the Company shall be under no liability to attain such figures. If performance figures, tolerances or characteristics obtained on any test provided for in the Contract are outside the acceptance limits, the Customer will give the Company reasonable time and opportunity to rectify its performance before making a claim for breach of Contract. Except where the Customer's claims are based on advice given by the Company in writing, the responsibility for ensuring that the Goods are suitable for its purposes rests upon the Customer.  
(b) Notwithstanding Sub Clause 6(a) hereof, any Contract for Goods specified as subject to prototype approval is accepted only on the basis that it is conditional upon the production by the Company of a prototype which meets the Customer's requirements and if such Goods cannot be produced in the period specified in the Contract either party may forthwith cancel the Contract without any liability save that the Company shall be entitled to payment for the work it has done on a time and materials basis at its rates prevailing at the time of cancellation.  
(c) Unless specifically agreed by the Company, in writing, no pre-acceptance shall be undertaken prior to shipment of the Goods to the Customer. Any request for pre-acceptance must be made, in writing, prior to the acknowledgement of the Contract and accepted by the Company in writing. The Company reserves the right to make charges for pre-acceptance work not specifically agreed to prior to Contract acknowledgement at the rates prevailing at the time of pre-acceptance. The Company reserves the right to refuse any pre-acceptance request made after Contract acknowledgement.
- 7. WARRANTY**  
(a) Any defects which under proper use appear in the Goods within a period of 12 months after delivery and are due to faulty materials, workmanship or design (other than a design provided or specified or agreed by the Customer) shall be made good by the Company, either by repair or at the Customer's option by replacement, provided the Company is notified in writing within 7 days of the date of such defects appearing and the Goods or the defective parts thereof are returned to the Company or where in the Company's sole discretion this is not practical are made available for inspection by the Company. The cost of carriage of the returned goods or parts shall be paid by the Customer and the repaired or replaced Goods or parts will be delivered by the Company to the Customer free of charge. The Company's liability under this condition shall be in lieu of any obligation implied by law as to the quality or fitness for any purpose of the Goods and save as provided in this condition the Company shall be under no liability, whether in Contract, tort or otherwise, in respect of any defects in the Goods or for any injury, loss or damage resulting from such defects or from any work done in connection therewith. Without prejudice to the generality of the foregoing exclusion the Company shall not in any circumstances be liable for any consequential loss or damage suffered by the Customer, including any loss or use, loss of contracts or loss of profits.  
(b) Any repairs or adjustments not performed or authorised in advance by the Company shall cancel the guarantees and release the Company from all further responsibility.  
(c) The Company shall be under no liability for the negligence of the Company, its employees, servants, agents, sub-contractors or others, except liability for death or personal injury resulting from negligence.  
(d) Notwithstanding the foregoing, the Company shall be under no liability:  
i. in respect of any defects which appear under proper use within a period of 12 months after delivery if the Customer fails to adhere strictly to the terms of payment within the Company's quotation or acknowledgement of order or  
ii. the Goods have not been used or maintained reasonably or properly by skilled personnel and with materials approved by the Company or  
iii. the defective Goods have not been despatched within 14 days of notification of the defect to the Company at the Customer's expense or  
iv. the Goods were sold as second-hand or reconditioned or  
v. when the Customer has not given to the Company written notice of loss or damage in transit within 7 days after the Company's advice note, invoice or other notification of the despatch of the Goods in case of non-delivery or within 7 days after delivery of the Goods in any other case and where the Goods are transported by an outside freight carrier the Customer has not complied in all respects with the freight carrier's conditions of carriage by notifying claims for loss or damage in transit.  
(e) In the case of Goods not the Company's manufacture the Customer is entitled only to the benefit of any guarantee or warranty given to the Company in respect thereof insofar as the Company is entitled to assign the same. In any event the Company's liability shall not exceed the amount recovered by the Company from the manufacturer concerned.  
(f) The Company's total liability for any one claim shall not exceed the Contract price.
- 8. TITLE OF OWNERSHIP**  
(a) The Goods shall remain the sole and absolute property of the Company until such time as the Customer has paid to the company the whole of the agreed price together with any other monies due to the Company.  
(b) The Customer is in possession of the goods solely as bailee for the Company and until such time as the Customer becomes owner of the goods the Customer undertakes to store them separately on his premises in a manner which makes them readily identifiable as the goods of the Company.  
(c) The Customer shall be liable for the Goods if he or she, not being a company, enters bankruptcy or is in breach of any of the conditions herein or if being a company is in breach of any of the conditions herein or is unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 or has a petition presented for its winding up, or passes a resolution for voluntary winding up, or has a Receiver, Administrative Receiver or Administrator appointed over any of its assets or enters into a voluntary arrangement with its creditors, and the Company may for the purpose or recovery of its goods enter any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- 9. INSOLVENCY OF THE BUYER**  
(a) If the Customer, his agent, partner, assignee, has a petition presented for its winding-up or passes a resolution for voluntary winding-up other than for the purpose of a bona fide amalgamation or reconstruction or compounds with its creditors or has a Receiver, Administrative Receiver or Administrator appointed of any part of its assets or, being an individual, becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law the Company reserves the right to take the following steps:  
i. a lien on the Goods together with a general lien in any other goods belonging to the Customer so long as the Company is in possession of them;  
ii. a right of stoppage in transit;  
iii. a right of resale, and  
iv. a right to suspend further deliveries of Goods.  
(b) The Company shall be entitled to treat the Contract as repudiated by the Customer and to invoice for any work in progress at the date of repudiation
- 10. PAYMENT**  
Unless otherwise agreed, payment: 50% payable with order, 40% on shipment or completion of service and 10% on either acceptance or 30 days from date of invoice whichever the sooner, subject to status. Interest and recovery costs will be charged on all overdue accounts in accordance with The Late Payment Code of Commercial Debts Regulations 2002 (UK).
- 11. DELIVERY AND RISK**  
(a) Unless otherwise specified in the Company's quotation or tender, the price excludes delivery. Delivery where specified will be to the premises specified by the Customer in its order and the Company's acknowledgement of order by any method of transport selected by the Company.  
(b) Any despatch or delivery date for Goods or the completion of works, whether specified in the Company's quotation or otherwise shall be taken as an estimate made in good faith but shall not be binding upon the Company, either as a term of the Contract or otherwise. In no circumstances shall the Company be liable for any loss or damage sustained by the Customer in consequence of failure to deliver by such date.  
(c) Unless otherwise agreed in writing, delivery shall be made at the premises specified by the Customer in the order. Subject to Clause 14, all risks in the Goods shall pass to the Customer upon delivery, which shall be deemed to have taken place when the Goods have been loaded onto the tailboard of the delivery vehicle.  
(d) The Company may deliver the Goods in instalments and invoice the Customer as if each instalment comprised a separate Contract upon the terms of these conditions.  
(e) If delivery of the Goods is delayed through any act or omission of the Customer the Company may put the Goods into storage at the Customer's risk and make a charge to the Customer equal to 3 per cent per month or part thereof of the invoice price of the Goods. In this event delivery of the Goods shall be deemed to have taken place when the goods have been put into storage.  
(f) Where the Company has undertaken to install the Goods, the Customer shall at its expense provide all such installation space, environment, power points and other facilities as the Company shall at any time reasonably require and any failure to do so shall be deemed as a failure to accept delivery.
- 12. VARIATIONS**  
Agreed delivery schedules shall not be varied by either party without the prior written consent of the other and if varied the Contract price shall be adjusted in accordance with the following rules, unless otherwise agreed.  
(a) On receipt of an amendment to contract order which re-schedules or varies the Contract will within 2 weeks advise the Customer of the price for the re-scheduled order. If the price is not agreed or an amended form not agreed by the end of the third week from amendment receipt, then the original Contract order remains unchanged. Maximum period of original contract order Schedule delay is 6 months. The order will lapse thereafter and the provisions contained in (b) below will apply. The Company will calculate the re-schedule charge in accordance with the following scale of charges as a percentage of goods contracted order price as follows:  
(b) Finished Goods and Work in progress within 3 months of amendment at the rate of 3 (three) per cent per month;  
(c) Work in progress beyond 3 months of amendment and materials on order at the rate of 2 (two) per cent per month.  
(d) On receipt of an amendment to Contract order, which cancels all or part of the order, the Company will within 2 weeks halt production of all goods which are the subject of the cancellation. The Company will then count and price all material, work in progress and finished goods. The Company will, where possible, cancel the supply of materials. The value of such materials cancelled less any cancellation charges will be reduced by 15 per cent and taken into account in the scale of charges below. The Company will calculate the price of the cancellation in accordance with the following scale:  
Finished Goods – at contracted price  
Work in progress – at 90 per cent of contracted price  
Materials in Kits – at Kit cost + 30 per cent  
Suppliers/sub contractors charges – at invoice price + 15 per cent  
A single charge is then invoiced covering the cancellation or required months of delay. Additionally, there will be an administrative charge of 200 pounds sterling or 3 per cent of the Contract value (re-scheduled or cancelled) whichever shall be the greater.
- 13. PACKING**  
All packing, storage and other packaging materials marked "PROPERTY OF CIMBIAN UK LIMITED" or defined in the Contract are to be so returned to the Company in good condition, carriage paid, within one month, if not so returned they will be charged for at cost + 30 per cent.
- 14. LOSS OR DAMAGE IN TRANSIT**  
(a) Where the price includes delivery and insurance, the Company will repair or at its option replace free of charge within a reasonable time all Goods damaged or lost in transit, provided separate notices, in writing, are given both to the carriers and the Company within 3 days of receipt of the Goods followed by a completed claim in writing within 5 days of receipt of the Company's Advice Note. Where the Goods are accepted from the Carrier without being inspected the Carriers Delivery Book must be signed "NOT EXAMINED" by the Customer. Failure to so mark the Carriers Delivery Book will be deemed a breach of this condition.  
(b) All Goods the subject of any claim from damage in transit or shortage in delivery shall be preserved intact as delivered for a reasonable period and at least 7 working days after making the claim within which time the Company shall be at liberty to attend the Customer's work and investigate the complaint. The Customer shall not dispose of any damaged Goods or related packaging without the Company's agreement in writing.  
(c) Compliance by the Customer with each and every requirement of this condition shall be a condition precedent to any right the Customer has to make a claim and any breach shall release the Company from any liability or obligation in respect of the claim or to investigate it. The acceptance by the Company of a claim for damage or claim, or any action taken by the Company thereon, shall not constitute any waiver by the Company and shall be without prejudice to the Company's right to reject the claim of the grounds of non-compliance with the Condition.
- 15. INDEMNITY/INSURANCE**  
**LIABILITY FOR ACCIDENTS & DAMAGE**  
(a) If the Company's personnel, agents or sub-contractors are working on the Customer's site for the purpose of the Contract then, subject to the provisions of Clause 7, the Company will indemnify the Customer against direct damage or injury to the Customer's property or person or that of others occurring during the course of such work, caused by the negligence of the Company's personnel agents or sub-contractors, and limited to the extent of the insurance carried by the Company (except for liability for death or personal injury).  
(b) **INSURANCE**  
The Customer shall take out and maintain insurance to take effect after delivery or whilst the Company is on site, to include (but not limited to) third party liability, accidental damage and fire and shall procure the endorsement of the Company as joint insured with full waiver of subrogation.
- 16. TERMINATION**  
(a) Without prejudice to other remedies and accrued rights the Company shall have the right to terminate the Contract forthwith and to claim for any resulting losses or expenses if the Customer commits a breach of this or any other Contract with the Company and fails to remedy the breach within a reasonable time of a written notice do so.  
(b) If for any reason the Company shall receive directions by a Government Department as to the disposal of the Company's Goods of the type, kind or category within the Contract and in the Company's opinion such directives shall prevent or hinder the fulfilment by the Company of the Contract then the Company may at any time, by notice in writing to the Customer, cancel the Contract in whole or in part.
- 17. SAFETY**  
All Goods supplied by the company comply with the relevant safety legislation and are labelled accordingly. Where additional safety covers and precautions are needed, the accompanying manuals give full details. The Customer must ensure that the relevant staff are fully trained in the correct use of all safety equipment and procedures before using the Goods. Advice as to the use of the coming into force after the date of the Company's quotation or tender (or where the Customer has made no tender, the acceptance of the Customer's order) of any Act, Order, Regulation or By-Law or the discovery of any new health or safety requirement or precaution or for any other reason, additional protective or safety equipment or work should be required, the cost thereof will form an extra to the tender or Contract price and shall be borne by the Customer.
- 18. DESIGN OWNERSHIP**  
(a) Unless otherwise expressly agreed in writing the Company owns all rights to the Design, Tooling and Goods Manufacture and future Developments. The Company's rights will not be reduced in any way by the Customer's payment of Design, Development, Engineering, Software, Tooling or any other charges in whole or in part.  
(b) All estimates, quotations, designs, drawings, plans or models prepared by the Company for the Customer information remain the Company's property and are copyright. They must not in whole or in part be submitted to or copied to or otherwise made use of by any other party without the Company's prior written consent.
- 19. INFRINGEMENT OF PATENT, REGISTERED DESIGN AND COPYRIGHT**  
The Customer shall indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable in the supply of any Goods or in the execution of any works in accordance with Customer's specification involving any infringement of a Registered Design, Patent or Copyright.
- 20. SAMPLES**  
The Customer is liable to pay the full price of any samples supplied by the Company to the Customer. The charge will be waived if the samples are returned in full working order and in reasonable condition within one month of delivery to the Customer PROVIDED ALWAYS THAT  
(a) The Customer has carried out such acts of maintenance as the Company specifies.  
(b) The Customer ensures that the samples are used only by skilled operators fully trained in the use of the same.  
(c) The Customer does not allow anyone to tamper or interfere with the samples.
- 21. FORCE MAJEURE**  
If the performance of the Contract or any obligation under it is prevented, restricted or interfered with by reason or circumstances beyond the reasonable control of the party obliged to perform it, the party so affected upon giving prompt notice to the other party shall be excused from performance to the extent of the prevention, restriction or interference but the party so affected shall use its best despatch whenever such causes are removed or diminished.
- 22. NOTICE OF BREACH**  
Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified in the quotation, tender or acknowledgement of order or such other address as that party may from time to time notify in writing and shall be deemed to have been served if sent by post 48 hours after posting.
- 23. INTERNATIONAL SALES CONDITIONS**  
All Conditions herein also apply to international sales.  
(a) All international prices are quoted as Ex-Works (EXW).  
(b) Payment Terms as shown on the Quotation Form from Home Sales or Export Sales are one or more of the following:  
i. Net Cash against irrevocable letter of credit in sterling in favour of National Westminster Bank Plc, 60 High Street, Bognor Regis, West Sussex, PO21 1SL, Account Number: 74011138, Sort Code: 60-03-08; or  
ii. Net Cash in Euro against irrevocable letter of credit in favour of National Westminster Bank Plc, 60 High Street, Bognor Regis, West Sussex, PO21 1SL, Account Number: 77006151, Sort Code: 60-03-08; or  
iii. By telegraphic transfer in sterling to National Westminster Bank Plc, 60 High Street, Bognor Regis, West Sussex, PO21 1SL, Account Number: 74011138, Sort Code: 60-03-08.  
iv. By telegraphic transfer in Euro to National Westminster Bank Plc, 60 High Street, Bognor Regis, West Sussex, PO21 1SL, Account Number: 77006151, Sort Code: 60-03-08.  
(c) Insurance is only provided when it is specifically included on a written order and it is charged to the international Customer's account.