

eMeasure Standard Terms and Conditions

These general conditions shall apply to all contracts, subject to any variations which may be agreed in writing between the parties, eMeasure Limited ("eMeasure") and Customer. eMeasure shall not be bound (by shipment, acknowledgement of Customer's order or otherwise) by any printed provision of Customer's orders which are inconsistent with the provisions hereof and the Customer hereby agrees that these terms and conditions take precedence over any terms and conditions of the Customer in relation to any dealings between the parties.

1. Formation of Contract

Any sales contract shall only be considered binding when eMeasure will have notified in writing to Customer, eMeasure's acceptance of an order received from the Customer without any addition to eMeasure's terms and conditions of sale or any other modification.

2. Specifications, substitutions and modifications

eMeasure reserves the right to make substitutions and modifications in the specification of the Products it sells provided that such substitutions or modifications will not deteriorate the overall Product performance.

3. Passage of title/transfer of risks

eMeasure expressly reserves all rights and title in any Product or associated device supplied until full payment of the contract price, interest and additional costs (if any) has been made to eMeasure. Where the Products include software, the Customer agrees not to upload, download, install, modify, disassemble or incorporate in any other manner the Products into the Customer's computer or computer system until full payment of the contract price, interest, and additional costs (if any) has been made.

Until ownership of the Products or associated device has passed to the Customer in accordance with this paragraph 3, the Customer will, where applicable: (a) hold the Products on a fiduciary basis as eMeasure's bailee; (b) store the Products (at no cost to eMeasure) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as eMeasure's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and (d) maintain the Products in satisfactory condition and use reasonable endeavors to keep safe against risks of damage to the reasonable satisfaction of eMeasure.

4. Proprietary information

As the Products contain valuable proprietary programs and data, eMeasure retains for itself or its suppliers all title and proprietary rights in and to all designs, engineering details, and other program data contained in any Product. The Customer shall treat any information disclosed to it here-under which is identified as confidential or proprietary in strict confidence and shall not disclose such information to third parties or use it for any purpose other than the purpose for which it was disclosed to Customer.

5. Costs and taxes

Custom duties, value added taxes, sales taxes and other taxes and costs, including transportation and insurance, shall be borne by the Customer in the absence of express written agreement to the contrary. If eMeasure agrees to bear any such taxes or costs, and if such taxes and costs should increase between the date of contract and the date of the delivery, eMeasure shall have the right to increase the price of the Products with the same amount.

6. Payment

eMeasure requires payment in advance of delivery for paid licenses. Upon failure to pay any such amount when due, eMeasure reserves the right to cancel current and outstanding orders: it may in all cases demand immediate payment of the balance of the order. All amounts past their due date shall bear interest at the rate of 15% per annum calculated on a daily basis. The insolvency of the Customer shall accelerate the date of all payments and render the total price immediately due and payable.

The payment shall be effected by PayPal or wire transfer and shall be in the currency defined on the invoice, in the absence of a written agreement on payment in another currency. Customer accepts all bank charges applicable in making payment for order.

7. Limited Product Warranty

eMeasure warrants that all Products are in conformity with the agreed specifications for the then current version. eMeasure does not warrant that the software shall operate uninterrupted or without error. The Warranty will be void on Products that have been subjected to abuse, misuse, accident, alteration, neglect, unauthorized repair or installation. eMeasure shall make the final determination as to the existence and cause of any alleged defect.

eMeasure's warranty in regard to liability is not valid in the event of delayed notification after three (3) months from the receipt of the Products. eMeasure's liability for Product claims in good time is as follows: eMeasure

shall at its own discretion, either solve the reported bug or supply a new release of the Product or refund the purchase price for the return of the defective Products.

eMeasure shall only be liable under this paragraph if:

- the Customer in addition to the complaint, has notified eMeasure in writing of

(1) the scope and nature of the software problem immediately following its detection;

(2) Software Product Name and Revision;

(3) Delivery date;

(4) Invoice number and

(5) Object code of the Product version exhibiting the problem, if required by eMeasure

- eMeasure's examination reveals that the software problem exists, significantly affects functionality and was not caused by accident, misuse, unauthorized alteration, improper tests or means of utilization or by any improper action on the part of the Customer.

eMeasure shall be granted a reasonable time to solve software problem or to supply a new release of the Products. eMeasure shall provide warranty for improvements or replacement parts in accordance with this paragraph.

The warranties mentioned above is the only warranties eMeasure makes with respect to the Products delivered in accordance with these terms and conditions of sale. It may be modified or amended only by a written instrument signed by a duly authorized officer of eMeasure and accepted by Customer.

The warranty and limitation is in lieu of all warranties with respect to the Products whether express, implied or statutory including without limitation the implied warranties of merchantability and fitness for a particular purpose.

8. Limitation of liability

The duty to perform on the part of eMeasure is contingent upon events of force majeure, including, without limitation, strikes, accidents, fires, explosions, earthquakes, the inability to procure materials from the usual sources of supply, requisition or order of the Government, including any regional assembly or parliament, or foreign governmental authority relating to the use or destination of the Products, or upon any like or unlike cause beyond the control of eMeasure. eMeasure shall also be similarly released in all other cases should their means of providing the Products and other services to the Customer or those of its subcontractors be influenced in whole or in part due to events upon force majeure as specified under this clause 8. Upon the occurrence of such event, the delivery date shall be deemed extended for a period equal to the delay caused by the force majeure.

eMeasure's liability under, for breach of, or arising out of this contract shall be limited to refund of the purchase price paid by the Customer. In no event shall eMeasure be liable for Customer's cost of procuring substitute goods. In no event shall eMeasure be liable for any special, consequential, incidental or other damages or for damages for loss of profits whether or not eMeasure has been advised of the possibility of such loss, however caused, whether for breach or repudiation of contract, breach of warranty, negligence or otherwise. This exclusion also includes any liability that may arise out of third party claims against Customer.

9. Deliveries

Customer can only modify the delivery terms if agreed by eMeasure, after confirmation in writing by eMeasure of Customer request and at the conditions of eMeasure. The Customer shall have no right to cancel orders nor to claim damages in this respect.

10. Cancellation

The order may be cancelled by mutual agreement in which case Customer shall reimburse eMeasure for all costs and expenses incurred. In the event that all or any portion of the order is cancelled by the Customer without default on the part of eMeasure or without eMeasure's written consent, the Customer shall remain liable for the original value of the order.

11. Patent and copyright indemnity

eMeasure, except as otherwise provided below, shall defend or settle any claim or proceeding against Customer or Customer's customer so far as it is based on an allegation that any Product of eMeasure's standard manufacture, design and composition infringes any patent, copyright, registered or unregistered design or any other form of intellectual property right when used as eMeasure contemplated and provided that eMeasure shall have sole control of any such action or settlement negotiations. Customer agrees that eMeasure at its sole option shall have no obligations under this paragraph unless Customer or its customer notifies eMeasure promptly in writing of such claim, suit or proceeding and gives eMeasure authority to proceed as contemplated herein, and, gives eMeasure proper and full information and assistance to settle and/or defend any such claim, suit or proceeding. If a Product, or any part thereof, is held to infringe and its use is enjoined, eMeasure will, at its option either:

- (a) procure for Customer, at eMeasure's expense, the right to continue using the Product;
- (b) replace or modify the Product so it shall be non-infringing; or
- (c) ask Customer to return such Product to eMeasure and refund to Customer or Customer's customer the purchase price originally paid less a use credit equal to the applicable eMeasure lease charges for the period of use.

eMeasure shall only resort to option (c) after using its reasonable endeavors to remedy the situation by first utilizing option (a) or (b). eMeasure has no liability for any claim, suit or action pursuant to this Paragraph based upon or arising out of compliance with Customer's designs, specifications or instructions; modification of the Product; or the combination operation or use of the Product with products or items not furnished by eMeasure. The foregoing states eMeasure's entire liability and obligations and Customer's exclusive remedy with respect to any claim or action alleging infringement of any intellectual property rights.

12. Product property rights

Customer agrees that eMeasure or its suppliers own all right, title and interest in the product lines that include the Products now or hereafter subject to these terms and conditions. In addition, Customer agrees that eMeasure or its suppliers own all right, title and interest in all patents, trademarks, service marks, trade names, inventions, copyrights, know-how and trade secrets relating to the design, manufacture, operation or service of the Products.

eMeasure offers the Products for sale and sells them subject to the Software License Agreement, which is included in the Product package. On receipt of the Product, Customer acknowledges receipt and review of such license and agrees to be bound by its terms.

13. Trademarks and Trade names

Customer may not use the trademarks, service marks and trade names that eMeasure or its supplier may adopt from time to time [the "Trademark(s)"] without eMeasure's prior written consent, which consent will be granted in eMeasure's sole discretion. Nothing herein shall grant to Customer any right, title or interest in the Trademarks.

14. Bankruptcy

If Customer shall become bankrupt or insolvent, compromises with its creditors, commences to be wound up or suffers a receiver to be appointed, eMeasure shall have the right to cancel this contract without judicial intervention or declaration of Customer's default and without prejudice to any right or remedy which shall have accrued or shall accrue thereafter to eMeasure.

15. Order Item Details

- 1) Rental payment includes all upgrades and off-site support.
- 2) License to Use the goods for the rental period will pass to the customer upon full payment of each invoice and acceptance of the Products Software License Agreement terms.
- 3) Software installation services, instructor led training and online training are not included with purchased software unless it is expressly written in the item list.
- 4) When software product is ordered it is not a trial or testing license, it is a full license supplied on a rental basis and it expires at the end of the rental period.

16. Maintenance Services

Maintenance services shall be subject to the terms of the eMeasure Maintenance Services policy, a copy of which can be provided to Customer upon request. Maintenance service is included in the rental payment.

17. Choice of law

These standard terms and conditions, and any dispute arising under or in connection with them, will be governed by and interpreted in accordance with Hong Kong Basic Law and the parties hereby submit to the exclusive jurisdiction of the Courts of Hong Kong.

18. Miscellaneous

Paragraph headings are provided for convenience or reference only and shall not limit or modify any term hereof. Stenographic and clerical errors are subject to correction.

19. Definitions

"Customer" means the person or corporation who has placed a purchase order with eMeasure to procure Products and/or associated services.

"License to Use" means the license granted for the Products which is described in the Products Software License Agreement.

"Product" means eMeasure software products and their associated intellectual property owned by eMeasure or its associated companies.