

# CASCODA TERMS AND CONDITIONS

## 1. Scope

The following terms and conditions shall constitute the agreement ("AGREEMENT") between Cascoda Limited and its subsidiary companies ("CASCODA") and the purchaser ("BUYER") of products ("PRODUCTS") from CASCODA. This AGREEMENT shall govern the relationship between CASCODA and the BUYER. By placing an order the BUYER shall be bound by the terms and conditions of this AGREEMENT. The parties agree that in case of a conflict between this AGREEMENT and any terms on BUYER's order or otherwise specified by the BUYER, this AGREEMENT shall prevail except where otherwise explicitly agreed in writing by both parties.

## 2. Quotations, Prices, Fees and Taxes

All quotations or otherwise stated prices are subject to change at 30 (thirty) days' notice. Shipments will be billed at the prices in effect on the date of CASCODA's acceptance of BUYER's order. All such prices are exclusive of any present or future taxes (including without loss of generality value-added tax, sales tax and purchase tax), customs fees and duties, export and import licenses, and other costs including brokerage fees, transportation and insurance in respect of PRODUCTS delivered to the BUYER, who shall be responsible for all such fees, duties, taxes and costs.

## 3. Delivery

CASCODA reserves the right to deliver PRODUCTS in one or more batches. Each batch may be billed separately. Unless otherwise agreed in writing, all deliveries are made FCA at the point of shipment, according to Incoterms 2010. CASCODA does not accept any risk for loss of or damage to PRODUCTS during transportation from the point of shipment. [Points of shipment currently available include Nördlingen (Germany) and Southampton (England).]

## 4. Payment

Unless otherwise agreed in writing, Payment terms shall be net thirty (30) days from the date of billing. All payments are to be in United States dollars. BUYER agrees to pay interest on any unpaid overdue balance at a compound interest rate of 2% per month or part thereof. In the event that CASCODA is required to bring legal action to collect an unpaid balance, BUYER agrees to pay losses, costs, and expenses, including court costs and reasonable attorneys' fees.

## 5. Order Cancellation

BUYER shall be liable to CASCODA for cancellation charges including but not limited to CASCODA's incurred costs and expected profit from the order, should BUYER wish to cancel any unfulfilled portion of an order without default on the part of CASCODA and subject to CASCODA's written approval. CASCODA shall have the right to cancel any unfulfilled order without notice to BUYER in the event that BUYER become insolvent or bankrupt or unable to meet its financial obligations.

## 6. Risk, Retention of Title and Ownership

BUYER shall assume all risk from the time the PRODUCTS are collected at the point of shipment. Ownership of the PRODUCTS shall not pass to the BUYER until the PRODUCTS have been fully paid for in accordance with Sections 2 and 4 above. Should the BUYER fail to fulfil its obligations in Sections 2 and 4 above, CASCODA shall be entitled to require immediate return of the PRODUCTS from the BUYER to CASCODA; to enter BUYER's premises and repossess the PRODUCTS; or to recover payment for the PRODUCTS.

## 7. Limited Warranty

BUYER shall notify CASCODA in writing of any visible defects, quantity shortages or incorrect shipments of PRODUCTS within seven (7) days of receipt of the shipment. If no such notice has been given, then the PRODUCTS are deemed accepted by the BUYER, who shall be deemed to have waived any rights to return PRODUCTS on the basis of visible defects, shortages or incorrect shipments.

The Warranty Period ("WARRANTY PERIOD") shall mean the period of 12 months starting on the date of acceptance or deemed acceptance of the PRODUCTS. CASCODA warrants that during the WARRANTY PERIOD the PRODUCTS shall function, in all material respects, as specified in the Datasheet.

Any claim by the BUYER which is based on defects or failures detected in the PRODUCTS during the WARRANTY PERIOD must be notified to CASCODA within 7 days from the date on which the defect or failure became apparent. Any such claim must be accompanied by the following, which may be obtained by contacting CASCODA's QA department:

- (a) a Failure Report Form, which shall be completed so as to include a detailed description of the scope and nature of the defect or failure and
- (b) a valid Return Material Authorisation (RMA) number

together with the said PRODUCTS (or a sample thereof if CASCODA so specifies). PRODUCTS returned without both of the above will not qualify for any warranty under this Section 7.

In the event of such a timely and correct notification by BUYER, CASCODA shall, at its own discretion, either:

- (a) repair or replace the defective PRODUCTS or
- (b) refund the original purchase price

upon return of the defective PRODUCTS, and this shall be BUYER's sole remedy for breach of warranty. CASCODA shall apply reasonable efforts to action this remedy within thirty (30) days from receipt of properly returned PRODUCTS.

The returned PRODUCTS must comply with the packing and shipping conditions of the original PRODUCTS (i.e. antistatic and moisture precautions as specified by standard IPC/JEDEC J-STD-033C).

This warranty does not apply to any PRODUCTS which have been subject to misuse (including electrostatic discharge), neglect, accident or modification or which have been soldered or altered such that they are not capable of being tested by CASCODA under normal test conditions or to usage of the PRODUCTS in conditions, environments or modes other than those described in CASCODA's published specifications or datasheets.

CASCODA does not assume or authorize any other person to assume for it any other liability in connection with its PRODUCTS.

It is anticipated that BUYER shall pass this warranty to any third-party purchaser of CASCODA's PRODUCTS.

## 8. Limited Liability

CASCODA shall not be liable for any direct, indirect, special incidental or consequential damages (including loss of profits). CASCODA shall not be held liable for any third-party

claims made to the BUYER or CASCODA, except as described in Section 7. In no event will CASCODA be liable for any sum greater than the original amount paid to CASCODA for the specific PRODUCTS giving rise to any liability on CASCODA.

## 9. Intellectual Property

All intellectual property rights relating to the PRODUCTS are retained by CASCODA, and BUYER acknowledges that it does not acquire any such rights through purchasing the PRODUCTS.

CASCODA provides no warranty that any specific use of the PRODUCTS, for any specific purpose and in any specific jurisdiction, is not in breach of any intellectual property rights held by any third party. However, CASCODA undertakes, subject to the limitations as set forth herein, to hold BUYER harmless in respect of any claim that selling, offering for sale, importing or keeping the PRODUCTS furnished hereunder or any item containing such PRODUCTS constitutes infringement of any patent, utility model, petty patent or innovation patent where such claim results directly from the inherent operation or features of the PRODUCTS.

If as a result of any suit or settlement BUYER is prohibited from selling, offering for sale, importing or keeping PRODUCTS furnished hereunder, CASCODA will, in its sole discretion and at its expense, either replace them with products to which such prohibition does not apply or return an equitable portion of the selling price.

The above undertakings shall apply only if, in respect of any such claim, BUYER notifies CASCODA in writing within thirty (30) days of becoming aware of such claim; BUYER gives CASCODA full authority to determine, in its sole discretion, how the claim should be defended; and BUYER provides CASCODA with any information or assistance which it may reasonably request.

CASCODA may, in its sole discretion, choose to settle any such claim for a sum equal to or less than its liability as specified below.

CASCODA's aggregate liability for any and all claims under this Section shall not exceed the purchase price received by CASCODA (net of any taxes, duties, insurance and transportation costs) for those PRODUCTS which are the subject of such claims.

The above undertakings shall not apply in respect of any claims which result from:

- (a) compliance with BUYER's designs, specification or instruction where such is at variance with CASCODA's recommendations;
- (b) modification of the PRODUCTS by a party other than CASCODA after delivery by CASCODA; or
- (c) use of the PRODUCTS where such use is not inherent in normal operation of the PRODUCTS or where CASCODA is able to specify a use which would not be subject to any similar such claim;

and BUYER shall hold CASCODA harmless in respect of any claims resulting therefrom.

## 10. Safety Aspects

As will all components used in circumstances where personal injury or death can result from correct or incorrect performance thereof, appropriate risk analysis should be performed and the resulting products or systems (including power supply and wiring) should be designed to "fail safe", and BUYER shall be required to take full responsibility for such risk analysis and fail-safe design, including in particular (but without loss of generality) appropriate safety precautions in the design and operation where high voltages are or may be present during operation. Therefore any use or sale or incorporation into modules of CASCODA's products shall be fully at BUYER's own risk and BUYER shall fully indemnify, defend and hold CASCODA harmless from and against any and all resulting claims, losses, damages, awards and costs (including but not limited to legal fees) arising from such use, incorporation or sale (whether arising from negligence or otherwise).

## 11. Confidential Information

Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other which it knows or should reasonably expect to be confidential.

## 12. Force Majeure and contingencies

Force Majeure (FORCE MAJEURE) shall mean an occurrence beyond the control of the party affected, impeding the performance of its obligations under this AGREEMENT, provided that such party could not reasonably have foreseen such occurrence at the time of entering into this AGREEMENT and could not reasonably have avoided or overcome it or its consequences. CASCODA shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to FORCE MAJEURE. In the event of FORCE MAJEURE, CASCODA and BUYER will endeavour amicably to find a solution acceptable to both parties.

## 13. Regulations and Export Compliance

BUYER agrees to comply fully with all laws and regulations concerning the purchase and sale of PRODUCTS. BUYER agrees to comply with the Export Administration Regulations of the European Union and the United States and any other relevant authority in so far as they apply to the sale of the PRODUCTS.

## 14. Assignment and Subcontracting

CASCODA shall be entitled to assign its rights under the contract (in whole or in part) or to subcontract any part of any work or services to be provided under the contract as it deems necessary or desirable.

## 15. Notices

Any notice hereunder shall be deemed to have been given if sent by pre-paid first-class post or by email to the party concerned at its last known address. Notices to CASCODA shall be sent to:

MAIL: Cascoda Limited, 1 Venture Road, Southampton, SO16 7NP, United Kingdom.  
EMAIL: info@cascoda.com

## 16. Waiver

The failure by CASCODA to exercise or enforce any right under this AGREEMENT shall not constitute a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## 17. Applicable Law

Unless otherwise agreed in writing, this AGREEMENT shall be governed by and construed under the laws of England and Wales. Any dispute arising from or in connection with this AGREEMENT will be brought before a competent court in the United Kingdom.

If the whole or any part of any term of this AGREEMENT is determined to be illegal, invalid, void or otherwise unenforceable, the remainder of this AGREEMENT shall continue in full force and effect.