

Eddyfi UK Ltd (formerly Silverwing (U.K.) Ltd) – General Terms and Conditions – Sale / Rental

- 1. AGREEMENT:** The following terms and conditions, including any documents, drawings or specifications incorporated therein by reference, shall be part of any Purchase Order accepted by EDDYFI or any Sale Agreement or Rental Agreement executed between EDDYFI and one of its customer (hereinafter "**the Customer**"), and together shall constitute the entire agreement effective between the parties (hereinafter "**the Agreement**"). In these terms and conditions, the name "EDDYFI" designates EDDYFI UK Ltd, a limited liability company established under the laws of England under registration number 03835805 and "products" refers to EDDYFI, Inuknut, M2M, Silverwing, Teletest and/or TSC brand products.
- 2. BINDING AGREEMENT:** The Agreement shall be binding upon EDDYFI's execution or written acceptance, or upon commencement of performance under the terms of the Agreement. In the case of conflict between these general terms or conditions and any Sale or Rental Agreement, the latter shall prevail. Any order hereof shall only be deemed to be accepted upon the issuance of a written order acknowledgement (OA) by EDDYFI
- 3. PRICES, TAXES AND DUTIES:** All prices are effective only as set forth in an EDDYFI quotation according to the schedule in that quotation. Orders not placed in accordance with the EDDYFI quotation (e.g. late order or requesting expedited delivery) may be accepted or may be subject to re-quotation and imposition of expedite fees, as determined by EDDYFI. All prices are subject to change without notice and are subject to correction of clerical errors. All payments shall be made without any deduction for or on account of any taxes, charges, fees and withholdings of any nature, unless if required by law. In such a case, Customer will pay EDDYFI the additional amounts necessary to ensure receipt by EDDYFI of the full amount which would have been received but for the deduction.
- 4. PAYMENT:** Except as otherwise agreed to by EDDYFI in writing, and upon approved credit, invoices will be issued as of the date of shipment and shall become due and payable in the lawful currency as per conditions specified in the quotation and the order acknowledgement. All invoiced amounts unpaid and outstanding will be subject to a charge of one and one half percent (1½%) per month (18% per annum) with interest on overdue interest at the same rate, from the date due or up to the maximum allowed by applicable law from the date due.
- 5. DELIVERY, TITLE, AND RISK OF LOSS:** Unless otherwise specified on the EDDYFI quotation, delivery is FCA (Manufacturing Site). In any case, delivery and risk of loss is in accordance with INCOTERMS 2010. Title to products shall pass to the Customer upon full payment of the invoice(s). In the absence of specific instructions, goods will be shipped via the carrier EDDYFI deems most practical. No claim for error in shipment will be considered unless made within ten (10) days of Customer's receipt of goods.
- 6. CANCELLATION:** No order may be cancelled by Customer, in whole or in part, without EDDYFI prior written consent. Any approved cancellation is subject to assessment of a cancellation fee as determined by EDDYFI.
- 7. RETURNS AND RESTOCKING FEE:** Except as provided for under the Limited Product Warranty, EDDYFI does not allow for return and restocking of products. However, if EDDYFI approves a return, returns are subject to a return/restocking fee as determined by EDDYFI. Special designs and non-catalog items may not be returned. All returned product shall be sent to EDDYFI freight prepaid by Customer in packaging appropriate to prevent damage in transit. Damages to products while in transit or in the possession of the Customer will be charged back to customer.
- 8. ALTERATION:** EDDYFI reserves the right to alter component designs without notice.
- 9. OPERATION:** The Customer shall ensure the product is operated by qualified and experienced personnel and in accordance with: (a) training and operating instructions supplied by EDDYFI from time to time; (b) conditions of coverage in all applicable insurance policies; and (c) all applicable laws, codes and regulations. The Customer shall use reasonable and proper care in the custody and operation of the product
- 10. INDEMNIFICATION BY THE CUSTOMER:** The Customer acknowledges that it shall use the products subject to the Agreement at its own risk and agrees to indemnify and save EDDYFI harmless from all liabilities, losses, damages, expenses, suits and judgments arising from injury to, or death of, any persons, or from damage to property in connection with or arising from this Agreement or the use, operation, storage or transportation of the products subject to the Agreement.
- 11. INTELLECTUAL PROPERTY:** All intellectual property rights (including, without limitation, patents, trademarks, registered designs and any rights to apply for same, copyright, design rights, database rights, rights in and to confidential information and know-how) and any rights analogous to the same anywhere in the world and existing at any time in products or arising out of or relating to the design or manufacture of products or the provision of services shall belong to and remain vested in EDDYFI.
- 12. LIMITED PRODUCT WARRANTY:** Except as otherwise agreed to by EDDYFI in writing, products such as instruments, mechanical products, spare parts, probes and cables are warranted, to the original Customer only, for use solely by Customer or direct affiliate, against defects in material and workmanship for a period of twelve (12) months from the date of delivery. Additional coverage may be provided under any Hardware Maintenance Plan (HMP) purchased

by the Customer. Probes and cables are considered consumables and require periodic replacement due to wear. EDDYFI does not warrant the service life of probes or cables. EDDYFI does not warrant any products against defects caused by misuse, abnormal operating conditions, alterations or damage caused by events beyond the control of EDDYFI. EDDYFI shall not be liable for product defects caused by or resulting from any inaccuracies in any drawing, description or specification supplied by the Customer. Upon Customer's written request during the warranty period, EDDYFI, at its choice, will repair or replace defective products within a reasonable time. The original term of warranty applies, without extension, for repaired or replacement products. All defective product shall be sent to EDDYFI freight prepaid by Customer in packaging appropriate to prevent damage in transit. The Limited Product Warranty does not apply to periodic calibration or minor maintenance as described in products operating manuals.

All Customer paid repairs performed by EDDYFI are warranted against defects in materials and workmanship for 90 days from the completion of repair. Upon Customer's written notice of defect within the 90 day period, EDDYFI will replace the defective part(s) and/or re-perform the service. This warranty is limited to failures in areas directly related to the repair performed.

EDDYFI does not warrant any non-EDDYFI / Inuknut / M2M / Silverwing / Teletest / TSC brand products.

- 13. SOFTWARE:** Any software related to the products is subject to specific Software License Agreement or Software Subscription Agreement. The software is not sold, but granted under a non-exclusive and restrictive license. The software must be used with the software-enable hardware or software key supplied by EDDYFI.
 - 14. TECHNICAL SUPPORT:** Eddyfi shall have no obligations to provide technical support and expertise for i) Hardware Product that are not under a valid calibration certificate or under a valid Hardware Maintenance Plan (HMP), and ii) Software that has not been updated to the latest version available under a Software Subscription or a Software Maintenance Plan.
 - 15. LEGAL PROCEEDINGS:** There shall be an immediate case of default from either party in the event that an order is issued or if it proceeds to any kind of proposition or arrangement with its creditors, or to a notice of intent to proceed to such proposition or arrangement, or assigns its assets for the benefit of its creditors, or a bankruptcy motion is filed against it, or a trustee or another bankruptcy officer is named to it under any statute on insolvency, or a seizure or judgment is executed on all or part of its assets (unless the seizure is properly opposed within 5 days of its execution), or otherwise becomes insolvent. In such a case, the termination of the Agreement shall be deemed effective one day before commencement of the said proceedings.
 - 16. LIMITED SERVICE WARRANTY:** EDDYFI agrees to perform service for Customer on the expressed condition that EDDYFI's sole obligation will be that the service will be performed in a professional and competent manner and will be of the kind and quality described in the EDDYFI quotation. EDDYFI does not warrant the fitness, suitability or condition of Customer's equipment upon which EDDYFI services are performed. If there is a specific problem with the quality of the service performed, Customer shall inform EDDYFI in writing and, if feasible, the service will be re-performed at no additional charge. In the event corrective services are performed by EDDYFI, Customer must provide adequate access to the equipment to allow EDDYFI to perform these services. Any additional costs incurred to provide access to the equipment will be the responsibility of the Customer. If re-performance of the service is not feasible, EDDYFI and Customer shall negotiate in good faith to arrive at an equitable solution.
- REGARDLESS OF WHETHER UNDER CONTRACT OR TORT, NEGLIGENCE, OR ANY OTHER LEGAL THEORY, THE LIMITED PRODUCT AND SERVICES WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. THE LIMITED PRODUCT WARRANTY AND THE LIMITED SERVICE WARRANTY ARE THE SOLE LIABILITY OF EDDYFI WITH REGARD TO ITS PRODUCTS AND SERVICES.**
- 17. LIMITATION OF LIABILITY** EDDYFI's total liability for any and all losses and damages arising out of any and all causes whatsoever including, without limitation, defects in the goods, services, software, documentation, or sitework supplied under this quotation, shall in no event exceed the purchase price of the applicable item(s). In no case shall EDDYFI be liable for any special, incidental or consequential damages based upon breach of warranty, breach of contract, negligence, direct liability or any other legal theory. Excluded damages include, but are not limited to; loss of profit, loss of savings or revenue, loss of use of the product or any associated equipment, downtime, the claims of third parties, including Customer, damage to property or injury to personnel.

Nothing in these conditions shall limit or exclude EDDYFI's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for EDDYFI to exclude or restrict liability.

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18. **COMPLIANCE WITH LAW AND EXPORT CONTROL REGULATIONS:** Customer agrees to take no action which will cause EDDYFI to be in violation of any law. Such laws shall include but not be limited to the Canadian, United Kingdom, EU, US, RSA and France Export Control Regulations or equivalent. Diversions, use, export or re-export contrary to the law is prohibited. The products may not be exported or re-exported to countries or to entities and persons that are ineligible under the Canadian, United Kingdom, EU, US, RSA and France Export Control Regulations or equivalent to receive commodities, technology and/or software. Customers that intend to resell or pass the goods to a third party, must declare all End User information to EDDYFI. It is the responsibility of Customer to understand the seriousness of exporting products without proper licenses or authorizations.
19. **FORCE MAJEURE:** EDDYFI shall not be liable for any delay or failure to ship or provision of services if such delay or failure is caused by circumstance beyond EDDYFI control, including but not limited to labor dispute, strike, embargo, war, riot, insurrection, civil commotion, fire, flood, accident, storm or any act of God, failure of supplies or transportation, governmental action or other causes beyond EDDYFI reasonable control.
20. **THIRD PARTY RIGHTS:** These terms and conditions are not intended to create any rights of any kind whatsoever enforceable by any third party, including any rights enforceable under the Contract (Rights of Third Parties) Act 1999.
21. **CONFLICTING TERMS:** In the case of conflict between the terms or conditions of Customer's order and the EDDYFI terms and conditions herein, EDDYFI terms and conditions shall apply.
22. **APPLICABLE LAW:** This Agreement shall be subject to the exclusive jurisdiction of the English Courts. This contract shall be governed by and construed in accordance with English law.
23. **IN THE CASE OF RENTAL OR CONDITIONAL SALE AGREEMENT, THE FOLLOWING TERMS AND CONDITIONS SHALL ALSO APPLY:**
- I. **OWNERSHIP:** The product is, and shall at all times remain, the exclusive property of EDDYFI and is provided to the Customer solely on a rental basis or until final complete payment under a conditional sale. The product is and shall remain personal property of EDDYFI even if installed in or attached to real property by the Customer. Provided that ownership of product is transferred to the customer by law due to installation or attachment to real property, Customer shall indemnify EDDYFI accordingly. The Customer shall neither create, nor permit to exist, any encumbrance upon, or security interest in, the product or any component thereof.
- II. **IDENTIFICATION:** EDDYFI may mark the product to conspicuously indicate that it remains owner of such product and the Customer shall not permit that marking to be obscured, removed or defaced nor shall the Customer permit conflicting marks to be made.
- III. **ACCESS:** The Customer agrees to grant EDDYFI with timely access to its premises and to the product.
- IV. **LOCATION:** The Customer shall at all times keep and maintain the product at the Location and shall not move the product without the prior written consent of EDDYFI.
- V. **OPERATION:** the Customer shall maintain adequate security measures to protect the product from theft, vandalism, sabotage, fire, industrial accidents and other accidents. If the Customer personnel have not operated the product before, or are determined to be unqualified by EDDYFI, at EDDYFI's sole discretion, EDDYFI may require that the Customer personnel take a detailed training course. The location and costs for training will be at the Customer's expense. The Customer shall reimburse and/ or indemnify EDDYFI for any product damage.
- VI. **RETURNS, TITLE AND RISK OF LOSS:** From its shipping date until the product is received by EDDYFI following its return by the Customer, the Customer shall bear the risk of loss, damage, theft or destruction of the product from any cause whatsoever. In addition, unless the Customer has elected to purchase the optional RED Program (see below), the Customer assumes responsibility for the product maintenance and repair from its shipping date until it is received by EDDYFI following its return by the Customer. The Customer shall return the product to EDDYFI in clean and proper operating condition, normal wear and tear excluded. Product requiring additional cleaning upon return will be subject to a minimum \$200 USD cleaning fee. The Customer shall properly pack for shipment the product being returned in its original shipping container and shall be responsible for any damage caused during return shipment. If the return is delayed due to additional usage, slow shipping method, or any other factor within the Customer's control, additional charges will apply.
- VII. **RED PROGRAM:** The Customer may elect to purchase the EDDYFI Rental Product Protection Plan (the "RED Program") covering maintenance and repair arising from normal use of the product (but excluding (i) loss, damage, theft or destruction of the product and (ii) maintenance and repair of the product as a result of the Customer's gross negligence or willful misconduct) during the period from its shipping date until it is received by EDDYFI following its return by the Customer, in consideration of fees as may be quoted by EDDYFI from time to time. The Customer shall pay all fees related to the RED Program on or before the time such fees are due, as determined by EDDYFI, and the Customer agrees that if the payment of fees related to the RED Program is not made on or before the time such fees are due, the product will not be covered by the RED Program, as if the Customer had not purchased the RED Program.
- VIII. **INSURANCE:** The Customer shall subscribe and maintain, at its own cost, (i) insurance covering the loss, theft, destruction or damage to the product in an amount not less than the replacement cost of the product and (ii) comprehensive general liability and professional liability insurance against claims for bodily injury, death and property damage in a minimum amount of US\$ 2,000,000 per occurrence to cover such liability caused by, or arising out of activities of the Customer with respect to, the product, pursuant to insurance policies satisfactory to EDDYFI. EDDYFI shall be a named insured on the insurance policies and such policies shall provide that they cannot be altered, amended, or canceled without thirty (30) days prior written notice to EDDYFI. A certificate of insurance confirming the above coverage and showing EDDYFI as a named insured shall be forwarded to EDDYFI before the product is shipped, provided, however, that EDDYFI shall be under no duty to either ascertain the existence of or to examine the insurance policies or to advise the Customer in the event such insurance coverage does not comply with the above requirements. The Customer's obligation to subscribe and maintain insurance as set forth above shall in no manner limit the Customer's liability or responsibility to EDDYFI hereunder, including without limitation if a loss or damage is not covered by the insurance.
- IX. **MODIFICATIONS:** The Customer shall not, without the prior written consent of EDDYFI, make any alteration, modification, improvement or adjustment of any kind to the product subject to the Agreement or an accessory or addition to the product, or undertake any disassembly of the product.
- X. **REMEDIES FOR DEFAULT:** In the event of any default by the Customer, EDDYFI may terminate the agreement with immediate effect and as a consequence of default claim the entire amount for the whole rental period still unpaid by the Customer under the Agreement immediately due and payable. In the event of such termination, the Customer agrees to immediately return the product subject to the Agreement to EDDYFI and agrees that EDDYFI may enter into the premises where the product is located and remove same. All costs and expenses, including legal fees incurred in execution of this section of the Agreement will be paid by the Customer. EDDYFI may at its discretion claim any interests on the outstanding amounts based on the statutory regulations.
- XI. **TERMINATION:** In case of termination of the Rental Agreement (or Conditional Sale Agreement) for any reason, each party shall immediately return to the other party any product or document that belongs to the other party, shall cease any use of the intellectual property of the other party and any statement to the effect that the Agreement is still effective. Additionally the Customer loses immediately the legal right of possession of the Product delivered. Each party shall also send to the other party any information that the other party is entitled under the terms of the Agreement. Notwithstanding the foregoing, the provisions relating to intellectual property, indemnification, choice of jurisdiction and confidentiality shall survive the termination of the Agreement, and such termination shall not have the effect of releasing a party as to any amount that it may still owe to the other party. In the case of a purchase order, the Customer may suspend or cancel all or part of the Agreement upon reasonable notice to EDDYFI and shall have no further liability to EDDYFI except for costs of labour and material incurred through the termination date, and reasonable termination fee as determined by EDDYFI.

ALL SALES/CONDITIONAL SALES/RENTALS ARE MADE PURSUANT TO THESE TERMS AND CONDITIONS AND ANY TERMS IN THE QUOTATION DOCUMENT. ALL ORDERS ARE RECEIVED WITH THE UNDERSTANDING THAT THEY ARE PLACED UNDER THESE TERMS AND CONDITIONS.

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