

**Deepwave Digital – Terms and Conditions of Sale**

1. **GENERAL.** As used herein, “**Deepwave**” means Deepwave Digital, Inc., a Delaware corporation, and “**Buyer**” shall mean the purchaser identified on the Deepwave Sales Order Confirmation to which these Terms and Conditions of Sale are attached.
2. **SCOPE OF AGREEMENT.** All orders for any goods (“**Products**”) issued by Buyer are accepted by Deepwave only upon issuance of Deepwave’s Sales Order Confirmation. The applicable Sales Order Confirmation, together with these Terms and Conditions of Sale constitute the sole, exclusive, and entire agreement between Deepwave and Buyer relating to the Products (this “**Agreement**”). Deepwave expressly rejects any different or additional terms or conditions contained in any documents issued or submitted by Buyer. Deepwave’s provision of credit, acceptance of any purchase order and/or sale of any Products are expressly made conditional on Buyer’s assent to this Agreement. Terms or conditions contained in any document issued by Buyer that in any manner purport to alter, modify, change, suspend or add to any term or condition to this Agreement shall be excluded from this Agreement and waived by Buyer. All sales of Products by Deepwave are made subject to this Agreement. Deepwave and Buyer expressly agree that Deepwave may modify these Terms and Conditions from time to time, and such modifications shall be binding upon Buyer. Buyer’s use of the Products shall at all times comply with all applicable laws, rules, and regulations, as well as the operating instructions of Deepwave and its third party suppliers.
3. **PRICE; PAYMENT; TAXES.** The purchase price of Products shall be as stated on the Sales Order Confirmation attached hereto. The prices are exclusive of any applicable federal, state, provincial or local taxes or assessments, duties, export or custom charges, VAT charges, brokerage or other fees, for which costs Buyer shall be fully responsible. All prices are subject to adjustment, at any time, by Deepwave for changes in input prices, economics or exchange rates, as applicable. Buyer shall have no right of set-off or withholding, and no deduction of any amounts due from Buyer to Deepwave shall be made without Deepwave’s prior, express written approval.
4. **DELIVERY.** All delivery dates for the Products are estimates only. The parties agree that Deepwave shall not be held liable to Buyer or any other party for any losses, damages, penalties, or expenses for any delay in delivery of the Products. Deepwave’s only obligation with respect to delivery dates shall be to use reasonable efforts to meet same. Unless otherwise set forth in an applicable Sales Order Confirmation, all deliveries are EXW (Incoterms 2010) loaded Deepwave shipping facility, freight prepaid (such delivery, “**Delivery**”), and the charge for freight will be added to the invoice. Neither freight charges nor tax is subject to any discount. Title and risk of loss to the Products pass upon Delivery. Deepwave will not be liable for any delays, breakage, loss or damage after having made Delivery in good order to the first transportation carrier. All claims for loss or damage in transit are to be made by Buyer directly to the transportation carrier and the appropriate insurance carrier retained by Buyer, and no deductions of any kind from the invoice amount shall be made with respect thereto. Products shall be deemed accepted by Buyer unless written notice of rejection is received by Deepwave within ten (10) days after receipt of the Products by Buyer.
5. **CANCELLATION AND CHANGES.** No cancellations of this Agreement or changes to the Products shall be effective without Deepwave’s written consent. Without such consent, a cancellation of or change to the Products shall entitle Deepwave to all remedies available by law or equity including cancellation costs or increased prices. Notwithstanding the foregoing, Deepwave reserves the right to refuse, cancel or delay any order placed by Buyer and accepted by Deepwave when Buyer is delinquent in payments or when Buyer has failed to perform any of its material obligations under this Agreement.
6. **WARRANTY. DEEPWAVE WARRANTS TO THE FIRST PURCHASER OF THE PRODUCTS, FOR A PERIOD OF ONE (1) YEAR AFTER THE DATE OF DELIVERY OF THE PRODUCTS, THAT THE PRODUCTS ARE AS DESCRIBED IN THE SPECIFICATIONS PROVIDED BY DEEPWAVE (THE “PRODUCT WARRANTY”); NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE PRODUCTS. EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 6, THE PRODUCTS SOLD UNDER THIS AGREEMENT ARE PURCHASED BY THE BUYER “AS IS” AND DEEPWAVE DOES NOT PROVIDE ANY WARRANTY FOR THE PRODUCTS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES THAT THE PRODUCTS ARE OF**
7. **MERCHANTABLE QUALITY, THAT THE PRODUCTS CAN BE USED FOR ANY PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS.**
7. **REMEDY.**
- 7.1 **PRODUCT.** BUYER’S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE PRODUCT WARRANTY SHALL BE, AS DETERMINED BY DEEPWAVE IN ITS SOLE DISCRETION, REPLACEMENT OF THE PRODUCTS, AT DEEPWAVE’S SOLE EXPENSE, OR A REFUND OF THE PURCHASE PRICE OF THE DEFECTIVE PRODUCTS. DEEPWAVE SHALL BE EXCUSED FROM THE PRODUCT WARRANTY REMEDY OBLIGATIONS UNDER THIS AGREEMENT TO THE EXTENT THAT ANY NONCONFORMANCE OR DEFECT IN THE PRODUCTS ARISES FROM ANY CAUSE OTHER THAN BREACH OF THE WARRANTIES IN SECTION 6, INCLUDING: (i) BUYER’S FAILURE TO COMPLY WITH THESE TERMS AND CONDITIONS OF SALE; (ii) DAMAGES FROM SHIPPING, IMPROPER HANDLING, STORAGE, INSTALLATION, MAINTENANCE OR REPAIR; (iii) ANY ALTERATION OR MODIFICATION TO THE PRODUCTS MADE BY ANYONE OTHER THAN DEEPWAVE; (iv) COMBINATION OF THE PRODUCTS WITH BUYER’S OR A THIRD PARTY’S HARDWARE OR OTHER EQUIPMENT IN A MANNER FOR WHICH THE PRODUCTS ARE NOT INTENDED; (v) USE OF THE PRODUCTS FOR A PURPOSE OR IN A MANNER THAT HAS NOT BEEN APPROVED BY DEEPWAVE OR FOR WHICH THE PRODUCT WAS NOT INTENDED; (vi) A FORCE MAJEURE EVENT; (vii) VANDALISM, CONTAMINATION, THEFT, MISUSE, ABUSE, ACCIDENT OR NEGLIGENCE OR ACTS OR OMISSIONS OF A THIRD PARTY; (viii) NORMAL WEAR AND TEAR; AND (ix) BUYER’S FAILURE TO COMPLY WITH THE WARRANTY CLAIM PROCEDURES SET FORTH IN SECTION 7.2.
- 7.2 **WARRANTY CLAIM PROCESS.** DURING THE PERIOD ENDING 1 YEAR AFTER THE DATE OF DELIVERY OF THE PRODUCTS, BUYER MAY MAKE A CLAIM FOR BREACH OF THE PRODUCT WARRANTY BY PROMPTLY (BUT IN ANY EVENT, WITHIN 10 DAYS OF DISCOVERING A DEFECT OR NONCONFORMANCE) NOTIFYING DEEPWAVE OF SUCH CLAIM AND PROVIDING (A) IDENTIFICATION OF THE PRODUCTS, (B) A COPY OF THE INVOICE FOR THE PRODUCTS, AND (C) A DETAILED DESCRIPTION OF WHY THE PRODUCTS ARE DEFECTIVE OR NON-CONFORMING. UPON RECEIPT OF A WARRANTY NOTICE, BUYER SHALL ALLOW DEEPWAVE TO INSPECT THE PRODUCTS AND ANY DAMAGED EQUIPMENT TO DETERMINE, IN ITS SOLE DISCRETION, WHETHER A WARRANTY CLAIM EXISTS AND BUYER’S REMEDY. TO THE EXTENT DEEPWAVE DETERMINES THAT THE BUYER IS ENTITLED TO A REMEDY UNDER THE PRODUCT WARRANTY, THEN DEEPWAVE SHALL, AT ITS OPTION, EITHER (i) USE COMMERCIALY REASONABLE EFFORTS TO PROMPTLY REPAIR OR REPLACE SUCH PRODUCTS OR (ii) REFUND OF THE PURCHASE PRICE OF SUCH PRODUCTS.
8. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL DEEPWAVE BE LIABLE TO BUYER OR ANY THIRD PARTY UNDER THIS AGREEMENT OR RELATED TO THE PRODUCTS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, LIQUIDATED OR CONSEQUENTIAL DAMAGES, INCLUDING ANY DAMAGES ARISING FROM LOST PROFITS, LOSS OF TIME, DELAYS, INCONVENIENCE, LOSS OF BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATIONS OR LOSS OF USE OF THE PRODUCTS, NOR SHALL DEEPWAVE’S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS.
9. **INTELLECTUAL PROPERTY RIGHTS.**
- 9.1 As between Deepwave and Buyer, Deepwave exclusively owns and shall retain exclusive ownership of all right, title, and interest, including all worldwide patent, trademark, copyright, trade secret, and other intellectual property and proprietary rights (collectively, “**Intellectual Property Rights**”) in and related to the Products. Buyer agrees that Deepwave is entitled, at its option, to obtain a license on Buyer’s behalf for any Product which (allegedly or in Deepwave’s reasonable opinion) infringes an Intellectual Property Right or to modify the Product in such a way that it does not infringe the Intellectual Property Right or take possession of the Product from Buyer and refund to Buyer the amounts paid for such Product.

- 9.2 Notwithstanding anything to the contrary, all software and firmware that has been loaded onto or incorporated into the Products (the “**Software**”) is licensed and not sold to Buyer. Subject to Buyer’s compliance with this Agreement, Deepwave hereby grants to Buyer a limited, non-sublicensable, non-exclusive license to perform and use the Software solely as part of the authorized use of the Products. Buyer may transfer the license granted in this Section 9.2 solely to an end-user of the Products (an “**End User**”). In the event any Software contains a click-through, pop-up or other end-user license agreement, the terms of such license agreement shall control over the terms of this Section 9.2.
- 9.3 Products which incorporate software components might contain open source software (“**OSS**”). Such OSS is always subject to separate third-party OSS licensing terms and conditions (“**OSS-Terms and Conditions**”). The OSS-Terms and Conditions come into effect between Buyer and the authors of the respective OSS. Under such OSS-Terms and Conditions, Deepwave is required to provide the same to Buyer and Buyer itself has to obey all of the OSS-Terms and Conditions and to fulfill all corresponding obligations in case Buyer further disposes of the Products through sales or other transfer to third parties (including an End User). Such obligations may include, for example, documentation obligations or obligations to provide the source code of any software integrated in a product in which the OSS has also been integrated by Buyer. An overview about all OSS-components contained in the Products and Services, as well as corresponding license text of the OSS Terms and Conditions (of all originating OSS authors), are part of Deepwave’s Product delivery (e.g. as part of the provided documentation, in a display field within a device, etc.). Note that new software component versions included in Deepwave’s Products might contain other and/or additional OSS. For such other and/or additional OSS, the same terms and conditions apply as stated herein.
10. **DEFAULT; TERMINATION.**
- 10.1 In the event Buyer fails to make payment to Deepwave of any amounts due and owing to Deepwave (including any applicable surcharge or freight charge) by the date on which such payment is due, Deepwave shall have the right to terminate any Buyer order or any unfulfilled portion thereof, and Deepwave may terminate any other agreement between Deepwave and Buyer. Deepwave may charge interest on the outstanding balance at an annual rate of 12% or the highest rate allowed by law (whichever is less). Deepwave shall have the right to employ an attorney to collect the balance due, and Buyer agrees to pay all collection costs incurred by Deepwave, including its reasonable attorneys’ fees. If Buyer shall become insolvent or if a petition in bankruptcy or insolvency is filed by or against Buyer under State or Federal law, Deepwave reserves the right to terminate and cancel this Agreement, any portion of this Agreement, or any other agreement, which is incomplete at the time of the aforementioned act.
- 10.2 Notwithstanding anything to the contrary contained herein, this Agreement shall terminate automatically and without notice upon the occurrence of any of the following events, each of which shall be deemed to be an incurable breach of this Agreement: (i) Buyer’s dissolution, termination of existence, insolvency or bankruptcy; (ii) the appointment of a receiver of any part of the property of Buyer; (iii) an assignment for the benefit of creditors by Buyer; (iv) the filing by Buyer of a petition in bankruptcy or under any insolvency laws or any laws related to the relief of debtors, readjustment of indebtedness or reorganization of Buyer; (v) Buyer’s failure to make repayment of its obligations for borrowed money; or (vi) Buyer’s failure to comply with any law with respect to conduct related to this Agreement, or engaging in any practice with respect to the Products determined to be illegal or an unfair trade practice.
11. **CONFIDENTIALITY.** Each party (the “**Receiving Party**”) acknowledges that in connection with the transactions hereunder, it may come into contact with Confidential Information (as defined below) of the other party (the “**Disclosing Party**”). The Receiving Party shall protect any and all of the Disclosing Party’s information that is not generally known to third persons, including all specifications, designs, operating conditions, processes, and methods relating thereto (collectively, “**Confidential Information**”), from unauthorized access, disclosure and use using the same methods it uses to protect its own confidential information, but in any event, commercially reasonable measures. The Receiving Party shall not (a) use Confidential Information for any purpose other than in connection with this Agreement, nor (b) disclose or permit the disclosure of any Confidential Information to any third party, except the Receiving Party may disclose Confidential Information to its employees and contractors with a bona fide need to know the Confidential Information in connection with the transactions hereunder and who agree to receive such information subject to the confidentiality provisions equivalent to those in this Agreement. The Receiving Party shall be liable to the Disclosing Party for a breach of the confidentiality provisions of this Section 11 by its employees and contractors.
12. **TEST EQUIPMENT.** The Products are sold as test equipment. If Buyer chooses to use the Product to transmit or receive signals over the air (“**Non-Test Use**”), it is Buyer’s responsibility ensure such Non-Test Use complies with all laws for the country, frequency, and power levels in which the Product is used. Some countries regulate reception in certain frequency band and it shall be the responsibility of the Buyer to maintain compliance with all local laws and regulations. Buyer hereby releases Deepwave from any and all costs, expenses, losses or damages arising out of Buyer’s Non-Test Use and Buyer agrees to indemnify, defend, and hold harmless Deepwave from any and all costs, expenses, losses or damages arising out of or in connection with Buyer’s Non-Test Use.
13. **FORCE MAJEURE.** Deepwave shall not be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accidents, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, acts of God, or any other contingency beyond the reasonable control of Deepwave, whether or not the contingency is of the same class as those enumerated above, it being expressly agreed that such enumeration is non-exclusive (collectively, a “**Force Majeure Event**”), for so long as such Force Majeure Event is in effect and for a reasonable period thereafter. The party claiming a Force Majeure Event shall provide the other party with timely notice of the occurrence of such Force Majeure Event.
14. **GOVERNMENT CONTRACTS.** If Products are purchased under a government contract or sub-contract, Buyer shall promptly notify Deepwave of the provisions of any government procurement laws and regulations which are required to be included in the contract covering the Products ordered. If compliance with such provisions increases Deepwave’s costs or liability, Deepwave shall be entitled, at its option, to adjust the prices accordingly, request separate payment of the additional costs, or terminate this Agreement with Buyer being responsible for all costs incurred by Deepwave.
15. **RELATIONSHIP OF THE PARTIES.** Buyer and Deepwave are independent contracting parties. Nothing hereunder or in the course of performance of this agreement shall grant either party the authority to create or assume an obligation on behalf or in the name of the other party, or shall be deemed to create the relationship of joint venture, partnership, association or employment between the parties.
16. **GOVERNING LAW; ARBITRATION.** This Agreement and all disputes between the parties arising out of or related to this Agreement shall be governed by the laws of the State of Delaware except for its choice of law rules; the United Nations Convention on the International Sale of Goods shall not apply.
17. **ASSIGNMENT.** Buyer may not assign this Agreement, either in whole or in part, nor delegate any performance hereunder, without the express, written consent of Deepwave, which consent shall be at Deepwave’s sole and absolute discretion. Any assignment without such consent shall be null and void. Deepwave may assign this Agreement upon written notice to Buyer.
18. **MISCELLANEOUS.** A waiver by Deepwave of any breach by Buyer of any provision shall not be construed as a waiver of any other breach of such provision or of any other provision of the Agreement. In the event that any provision of this Agreement shall by a court be declared void or unenforceable, the validity of any other provisions and of the entire Agreement shall not be affected thereby. Deepwave may at any time insist upon strict observance of any or all conditions as stated herein, notwithstanding any previous custom, practice, or course of dealing to the contrary. Deepwave may at any time set off any amounts due from Buyer to Deepwave against any amounts which may be due or owing from Deepwave to Buyer under this Agreement. Deepwave’s rights and remedies set forth herein shall be in addition to any legal or equitable right or remedy available to Deepwave.