

## GENERAL TERMS AND CONDITIONS OF SALE - Disguise Technologies Limited

### **APPLICATION**

1. These "General Terms and Conditions of Sale" ("GTCS") apply to all contracts of sale of goods between (i) Disguise Technologies Limited and, where applicable, any of its subsidiaries (together, "Disguise") and (ii) the customer ("Customer") other than in respect of goods and/or services purchased on Disguise's website where such other terms shall apply as Disguise determines from time to time. No deviation from or amendment to the GTCS shall be binding on Disguise unless agreed in writing between Disguise and the Customer. Disguise and the Customer may also be referred to as a "Party" or collectively as the "Parties". The term "goods" shall mean any goods ordered by the Customer from Disguise pursuant to the provision of the GTCS.

2. Any terms and conditions contained in or delivered with the Customer's order or other document or any which are implied by trade, custom, practice or course of dealing shall not be binding, and the Customer waives any right, which it otherwise might have to rely on such terms and conditions.

### **QUOTATIONS, ORDERS AND ORDER CONFIRMATIONS**

3. Disguise may provide a quotation to a Customer upon request and such quotation may be delivered to the Customer by email ("Quotation"). Quotations are only valid for 30 days from the date of the Quotation unless otherwise specified by Disguise from time to time. A Quotation shall not constitute an offer.

4. The Customer may place any order(s) by email to Disguise in respect of such Quotation in accordance with clause 3 and Disguise shall, if accepted by Disguise in accordance with clause 5, provide the goods to the Customer as per the details (including price) contained in such Quotation (save for manifest error) in accordance with the GTCS.

5. An order shall only be deemed accepted if Disguise's Customer Management department issues written confirmation of the acceptance of such order(s) to the Customer within 15 business days of the date of receipt of such order(s) ("Order Acknowledgement"). The contract for the sale and purchase of the goods pursuant to the Order Acknowledgement shall only come into existence at the point when such Order Acknowledgement is issued by Disguise to the Customer.

6. If the terms and conditions in Disguise's Order Acknowledgement deviate from the Customer's order(s) and the Customer wants to reject such deviation(s), the Customer must notify Disguise's Customer Management

department in writing by email to that effect at the earlier of either of the following: (i) within 5 business days of the date of receipt of the Order Acknowledgement, and (ii) prior to the packaging date of the goods, failing which the Customer shall be deemed to have accepted the terms and conditions set out in the Order Acknowledgement.

### **DELIVERY, TRANSFER OF RISKS**

7. Subject to any delivery clause in the Order Acknowledgement, delivery shall be deemed to have occurred for finished goods Ex Works at Disguise's head offices, UK, or its manufacturers as the case may be, and for spare parts from either of the same as the case may be ("Delivery Location"). The Customer shall be ready for and accept delivery at the delivery date stated in the Order Acknowledgement or other written communication from Disguise ("Delivery Date"). If the Customer fails to accept delivery on the Delivery Date ("Customer Acceptance Failure") then delivery is deemed to have occurred at the Delivery Date. The Customer shall be liable for payment, if applicable, for the cost of storage of these goods at Disguise's warehouse and for any other reasonable costs or expenses, incurred by Disguise, due to the Customer Acceptance Failure, and Disguise reserves the right to sell the goods to a third party and claim damages against the Customer for loss of profit and any costs incurred by the Customer Acceptance Failure.

8. Subject to clause 7, if the Customer requests Disguise to procure a courier to delivery any goods to the Customer then Disguise shall be free to select the carrier and mode of transportation if applicable, unless delivery is arranged by the Customer and Disguise has agreed in writing before dispatch. In such scenario, delivery shall be at the point where such carrier collects the goods from Disguise for transportation.

9. If the goods are transported from Disguise's warehouse by any carrier (whether organised by Disguise or the Customer), the Customer must, when the goods arrive at the destination, in order to get the goods released by the carrier sign the accompanying delivery note. If any goods are visibly damaged, the Customer must give details thereof on the delivery note and must file a claim with the carrier and with Disguise in writing via email to Disguise's Customer Management department within 24 hours, failing which the Customer shall be deemed to have waived any rights which the Customer might have in respect of the damaged goods.

10. The Customer must thoroughly examine all goods immediately upon receipt for the purpose of ascertaining

whether the goods are defective or inconsistent with the data in the Order Acknowledgement (the "Examination"). The Customer shall be deemed to have accepted the goods in respect of inconsistency with the specification in the Order Acknowledgement, which the Customer discovered or ought to have discovered during the Examination, if the Customer has not notified Disguise's Customer Management department to the contrary in writing via email within 5 business days after delivery.

### **DELIVERY DELAY**

11. Should Disguise not be able to deliver by the Delivery Date, Disguise shall as soon as possible notify the Customer to that effect and at the same time state when delivery is expected to take place. If delivery is expected to take place more than, or has not taken place within, 14 business days after the Delivery Date, and the delay is caused by circumstances for which Disguise is responsible, the Customer shall be entitled to reject the goods by notifying Disguise's Customer Management department to that effect in writing via email within 3 business days after receipt of Disguise's notification or the expiration of the 14 business days, whichever comes first, failing which notification by the Customer, the Customer shall be deemed to have waived the right to reject the goods. Except as stated in this clause 11, the Customer is not entitled to raise any other claims in the event of delayed delivery, whether claims for damages based on contract/negligent acts/omissions or otherwise.

### **WARRANTY, PRODUCT LIABILITY**

12. Subject to clauses 13-21, Disguise warrants the following:

a) All finished hardware goods manufactured by Disguise will be free from defects in materials and workmanship under normal use of the goods in the industry for a period of 24 months from the Delivery Date, whilst accessories and spare parts will be free from defects in materials and workmanship under normal use of the spare parts in the industry for a period of 12 months from the Delivery Date. Disguise warrants to be able to deliver spare parts only during the warranty terms of the finished goods stated in this clause 12.

b) All certified pre-owned goods will be free from defects in materials and workmanship under normal use of the goods in the industry for a period of 90 days from the Delivery Date.

c) The Software is provided "as is" without warranty of any kind, express or implied, including but not limited to warranties of performance,

merchantability, fitness for a particular purpose, accuracy, omissions, completeness, currentness and delays. The Customer agrees that outputs from the Software will not, under any circumstances, be considered legal or professional advice and are not meant to replace the experience and sound professional judgment of professional advisors in full knowledge of the circumstances and details of any matter on which advice is sought.

13. a) All finished hardware goods classed as "media servers" will be fitted with a tamper proof label. The removal of this label without express permission from the Disguise Technical Support and Service department will render the warranty null and void.

b) Any warranty claim by Customer based on any defect in finished goods or spare parts, which defect the Customer discovered or ought to have discovered during the Examination, shall be notified in writing via email to Disguise within 5 business days after the delivery time as stated in the Order Acknowledgement or, where the defect could not reasonably have been discovered during the Examination within 7 business days after manifestation of the defect, failing which the Customer shall be deemed to have accepted the finished goods or spare parts as non-defective. Warranty claims notified by the Customer to Disguise after the expiration of the warranty terms stated in in the GTCS are not accepted.

14. Where any valid warranty claim is notified to Disguise in accordance with the terms of clause 13 and approved by Disguise in writing (which approval shall not be unreasonably withheld), Disguise shall be entitled to fulfill its warranty obligations as follows: (i) If the Customer can be reasonably expected to be able to repair the defect, if necessary with support from Disguise's Technical Support and Service department, Disguise may fulfill its warranty obligations by sending the necessary replacement parts to Customer free of charge along with a replacement tamperproof label; (ii) If the Customer cannot reasonably be expected to be able to repair the defect, Disguise shall repair or replace and add a new tamperproof label to the defective finished goods or spare parts, subject to the Customer (a) assigning to Disguise all property rights to such redundant finished goods or spare parts and (b) complying, if applicable, with any reasonable request by Disguise for the Customer to return the goods and/or parts in question to Disguise. Any replacement goods or spare parts will be a) equivalent or substantially similar to the finished goods or spare parts and b) new, equivalent to new or re-conditioned; or (iii) If none of the foregoing remedies are commercially viable in Disguise's sole judgment, Disguise may opt instead to refund to Customer the net purchase price paid by Customer for the defective finished goods or spare parts less reasonable depreciation of the value due to use or age, subject to the Customer assigning to Disguise all property rights to such finished goods or spare parts. The Customer shall have no right to use,

modify or sell any redundant finished goods or spare parts that have been replaced ("Redundant Item"). The Customer shall communicate with Disguise's Customer Management to seek direction as to how to deal with any such Redundant Item within 10 business day of the Redundant Item being replaced. The Customer shall at the direction of Disguise either (i) return to Disguise any Redundant Item; or (ii) or destroy the same. The Customer shall not return such Redundant Item to Disguise, unless Disguise has authorised the return in writing. The Customer shall assume responsibility (including all costs and expenses) for shipment, freight and adequate freight insurance back to a Disguise certified service centre. Disguise shall only assume responsibility for shipment and expense for freight and freight insurance back to the customers registered address in country of origin of the warranty claim, unless the warranty claim is not valid in Disguise's reasonable judgment and Customer shall assume all responsibility and expense for dismantling, removal, re-installation and duties in connection with the foregoing. Repair or replacement under the warranties contained herein does not interrupt or extend the warranty terms stated in clause 12.

15. The warranties contained herein shall not extend to any finished goods or spare parts from which any serial number has been removed or which have been damaged or rendered defective (a) as a result of normal wear and tear, willful or accidental damage, negligence, misuse or abuse; (b) due to water or moisture, lightning, windstorm, abnormal voltage, harmonic distortion, dust, dirt, corrosion or other external causes; (c) by operation outside the specifications contained in the user documentation; (d) by the use of spare parts not manufactured or sold by Disguise or by the connection or integration of other equipment or software not approved by Disguise unless the Customer provides acceptable proof to Disguise that the defect or damage was not caused by the above; (e) by modification, repair or service by anyone other than Disguise, who has not applied for and been approved by Disguise to do such modification, repair or service unless the Customer provides acceptable proof to Disguise that the defect or damage was not caused by the above; (f) due to procedures, deviating from procedures specified by Disguise; or (g) due to failure to store, move, transport, install, test, commission, maintain, operate or use finished goods or spare parts in accordance with Disguise's instructions and training, in a safe and reasonable manner or in a manner that does not provide at least the degree of protection afforded by Disguise branded storage, transportation and installation equipment, including but not limited to transportation cases and folding transportable rigs, in terms of shock absorption and protection from vibration for the product and all its components, impact protection, ingress protection, protection from unfavorable environmental conditions, thermal

insulation and strength. All approvals and certifications related to goods are related to a single product and not a group of products used together.

16. None of the warranties contained herein shall apply to finished goods or spare parts which are sold "as is", as "second-hand", as "used", as "demo" or under similar qualifications or to Consumables as defined in clause 17.

17. "Consumables" is defined as any part(s) of goods or part(s) for use with goods, which part(s) of goods or part(s) for use with goods are consumed during the operation of the goods and which part(s) of goods or part(s) for use with goods require replacement from time to time by a user such as, but not limited to, light bulbs and smoke fluid. Disguise will provide information on Consumables when requested to do so by Customer.

18. None of the warranties contained herein shall apply, unless the total purchase price for the defective finished goods or spare parts has been paid by the Customer to Disguise by the due date for payment in accordance with the GTCS.

19. The Customer shall have no other remedies in connection with defective finished goods or spare parts than the rights granted pursuant to clauses 12-18. Except as set forth in the express warranties contained herein, Disguise makes no conditions, warranties, representations, express or implied, in fact or in law, including, but not limited to, any warranties of satisfactory quality, merchantability or fitness for a particular purpose or any warranties arising out of usage or trade, all of which are expressly excluded to the fullest extent permissible by applicable law.

20. The warranties contained herein apply only to the original purchaser and are not assignable or transferable to any subsequent purchaser or end-user.

21. To the extent lawful, Disguise shall only be liable for damage to property and for personal injuries caused as a consequence of defects in the finished goods or spare parts delivered to the extent that it is documented that such defect arose due to Disguise's negligence that could not have been prevented by the Examination or other examination by the Customer ("Product Liability").

## **RETURN OF GOODS, CANCELLATION OF ORDERS**

22. Goods may not be returned to Disguise, unless Disguise has authorised the return in writing. Where Disguise has authorised the return of goods, the Customer shall follow the guidelines for returns issued by Disguise from time to time.

23. Any order(s) placed by the Customer which has been accepted by Disguise by the issue of an Order Acknowledgement are binding on the Customer and cannot be cancelled by the Customer unless to the extent that Disguise agrees in writing. Disguise therefore retains the right to charge the Customer in full in respect of any Order Acknowledgement.

## **PRICE**

24. Unless otherwise stated in Disguise's Order Acknowledgement, all purchase prices exclude any sales, use, excise, value added or other taxes or duties imposed by any governmental or municipal authority. The rate of any taxes or duties will be that applying at the time of invoicing.

#### **PAYMENT, PAYMENT DELAY**

25. The purchase price as specified in Disguise's Order Acknowledgement is payable according to the payment terms specified in the Order Acknowledgement. In the absence of payment terms in the Order Acknowledgement, delivery will, at Disguise's sole discretion, only take place against prepayment of the purchase price.

26. Disguise does not commit itself to send statements of account, but normally does so regularly. In the event that Disguise does not within 30 calendar days of the date of a statement of account receive an objection in writing against its balance, the statement of account shall be deemed to be conclusive evidence of the Customers acceptance of the statement of account.

27. In the event that the Customer should remain in arrears with payments to Disguise for any reason for 10 business days or more, Disguise shall be entitled to: a) Terminate the Order Acknowledgement and/or any other contracts of sale and demand immediate return of all unpaid goods, delivered to the Customer, at the Customer's expense; b) Suspend delivery of the Order Acknowledgement and/or any other contracts of sale for future delivery; c) Keep any Customer property in Disguise's possession as a lien against such non-payment; d) Claim interest at the rate of 2% per month or any part thereof, as from the due date and until payment is made; e) Sell the goods to a third party and claim from the Customer damages for any loss suffered. At the reasonable request of Customer, Disguise shall in writing inform the Customer of its decision to assert any of the above rights, but shall not be required to give any notice.

28. Disguise may use all monies received from the Customer towards payment of any part of any debt owing by the Customer at Disguise's sole discretion irrespective of any instructions to the contrary by the Customer.

#### **RETENTION OF TITLE**

29. Notwithstanding delivery and the passing of risk in the goods the property rights in the said goods shall not pass to the Customer until Disguise has received in cash or cleared funds payment in full of the purchase price of the said goods and all other goods agreed to be sold by Disguise to the Customer for which payment is then due.

30. Until such time as the property rights in the said goods passes to the Customer, the Customer shall hold the said goods as Disguise's fiduciary agent and bailee and shall keep the said goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as

Disguise's property, but the Customer may sell or use the goods in the ordinary course of its business.

31. Until such time as the property rights in the said goods passes to the Customer (and provided the said goods are still in existence and have not been resold) Disguise may at any time require the Customer to deliver up the said goods to Disguise and if the Customer fails to do so forthwith enter on any premises of the Customer or any third party where the said goods are stored and repossess the said goods.

32. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the said goods, which remain the property of Disguise, but if the Customer does so, all monies owing by the Customer to Disguise shall (without limiting any other rights or remedy of Disguise) forthwith become due and payable.

#### **INTELLECTUAL PROPERTY RIGHTS INFRINGEMENTS**

33. To the best of Disguise's knowledge, goods delivered by Disguise to the Customer do not infringe any third party intellectual property rights. However, Disguise does not make any warranty to that effect. Moreover, Disguise shall have no liability for any claim of infringement, which is based on marketing, distribution or use of the goods other than as authorised by Disguise and in a manner for which they were designed. In the event that goods or any part(s) thereof are held by a court of competent jurisdiction, not subject to appeal, to infringe a third party's intellectual property right, Disguise shall in its sole discretion (a) procure for the Customer and the Customers' customers the right to continue to use the goods; (b) replace the goods with non-infringing goods, subject to the Customer assigning all property rights to such goods to Disguise; (c) modify the goods, or, where modification does not require any special knowledge, provide the Customer with parts enabling it to modify the goods at its own expense, to avoid infringement; or (d) recall the goods. If Disguise decides to recall the goods then Disguise shall, if the goods were delivered to the Customer within the immediately preceding two year period, refund the purchase price for the goods to the Customer less a reasonable depreciation due to age, use, and condition, subject to the Customer assigning all property rights to such goods to Disguise. If the goods were delivered to the Customer before the immediately preceding two-year period, Disguise shall not be obligated to make any refund.

34. The provisions in clause 33 constitute Disguise's maximum liability in respect of clause 32 herein, and the Customer shall limit its liability towards its customers accordingly.

#### **LIMITATION OF LIABILITY**

35. Nothing in the GTCS shall limit or exclude liability of Disguise for (i) death or personal injury as a result of Disguise's negligence; (ii) fraud or fraudulent

misrepresentation; or (iii) anything else that may not be limited or excluded by law.

36. Subject to clause 35, in no event shall Disguise be liable in tort, contract or otherwise (including negligence) to compensate the Customer for any business interruption, loss of (anticipated) profits, revenue, business, contracts or (anticipated) savings, costs of procurement of substitute goods or services or any special, indirect or consequential loss or any punitive damages.

37. Subject to clause 38, Disguise's total liability to the Customer in respect of all other losses arising under or in connection with the GTCS, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amounts received by Disguise from the Customer pursuant to the Order Acknowledgement giving rise to the liability.

38. Disguise's total liability specifically in respect of Product Liability only shall in no circumstances exceed £5 million in total.

39. The Customer agrees that, subject to clause 35, that Disguise shall have no liability to any third party who uses the goods (or any part thereof or any service related to such goods) pursuant to any Order Acknowledgement. If Disguise suffers a loss or any liability towards such third party to the extent that the Customer is responsible (whether partly or fully and for whatever reason, including but not limited to the Customer not complying with operating instructions and/or training advice from time to time), then the Customer shall indemnify Disguise against all such related liabilities, costs, expenses, damages and losses suffered or incurred by Disguise accordingly (including but not limited to all costs and expenses incurred by Disguise defending any such claim against such third party).

#### **GENERAL**

40. The GTCS and all contracts of sale of goods, including but not limited to, any and all Order Acknowledgements, between Disguise and the Customer shall be exclusively governed by and construed in accordance with the laws of England and Wales without application of that country's conflict of law principles (no renvoi). The Parties submit to the exclusive jurisdiction of English courts except that Disguise - at its sole discretion - shall be entitled alternatively to institute legal proceedings against the Customer at courts having jurisdiction over the Customer's domicile. If a third party files a claim against one of the Parties for damages on product liability or intellectual property rights infringements, this Party shall immediately inform the other Party thereof. The Parties are mutually obliged to let themselves be summoned to appear before a court of justice/arbitration that hears such claim for damages. The mutual relationship between Disguise and the Customer shall however be resolved in accordance with the provisions of this clause and the

remaining relevant provisions of the GTCS.

41. The invalidity, unenforceability or illegality of any term, condition or stipulation in the GTCS shall not affect the validity, enforceability or legality of the remaining terms, conditions and stipulations of the GTCS.

42. Except as provided herein, any required or permitted notices hereunder must be given in writing at the registered address of each Party, or to such other address as either Party may notify to the other Party by written notice in the manner contemplated herein, by one of the following methods: hand delivery, registered mail, or facsimile.

43. Non-performance of either Party shall be excused to the extent that performance is rendered impossible by strike, lock-out, fire, severe weather, flood, earthquake, terrorism, war, acts of God, governmental acts, failure of suppliers or carriers for any reason or any other reasons beyond the reasonable control of the non-performing party.

44. The Customer undertakes to Disguise not at any time to disclose to any person any confidential information in respect of Disguise (including but not limited to know-how, trade secrets, and any other commercially sensitive information concerning Disguise) unless (i) required by the law; or (ii) disclosed to the Customer's employees or consultants subject to the extent that the recipient needs to know such confidential information and that the Customer takes all reasonable steps to make sure that such recipient complies with this confidentiality obligation as though they were a party to the GTCS.

#### **WEEE**

45. The Customer shall:

- a) be responsible for financing the collection, treatment, recovery and environmentally sound disposal of (i) all waste electrical and electronic equipment ("WEEE") as defined in the The Waste Electrical and Electronic Regulations 2013 ("WEEE Regulations") arising or deriving from the goods supplied pursuant to the GTCS; and (ii) all WEEE arising or deriving from products placed on the market prior to 13 August 2005 where such products are to be replaced by the goods supplied pursuant to the GTCS and the goods are of an equivalent type or are fulfilling the same function as that of such products;
- b) comply with all additional obligations placed upon the Customer by the WEEE Regulations by virtue of the Customer accepting the responsibility set out in Clause 45 a); and
- c) provide Disguise's WEEE compliance scheme operator with such data, documents, information and other assistance as such scheme operator may from time to time reasonably require to enable such operator to satisfy the obligations assumed by it as a result of the Disguise's membership of the operator's compliance scheme.

46. The Customer shall be responsible for all costs and expenses arising from and relating to its obligations in clause 45.

47. Further information in respect of the arrangements set out in clause 45 can be found at [www.electrolink.eu.com](http://www.electrolink.eu.com) by clicking on 'BUSINESS WEEE COLLECTIONS', then clicking 'continue' under final users, and then entering WEEE registration number WEE/MM4445AA where prompted.

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