

CATAPULT

Terms and Conditions of Sale

Catapult Software Limited ("Catapult") Conditions of Sale, U.S. and International.

The sale of any products, services or other goods ordered by the customer ("Customer") is expressly conditioned upon the terms and conditions contained or referred to herein. Any additional or different terms and conditions set forth in the Customer's purchase order or other communication are objected to and will not be binding upon Catapult unless specifically agreed to in writing by Catapult's authorized representative. Any order or authorization by the Customer, whether written or oral, to furnish products or services or licensing of software shall constitute acceptance of these terms and conditions.

Currency, Pricing and Taxes

Prices are in US dollars unless another currency is specified.

All prices are exclusive of GST or any other value-added tax (VAT), export/import duties, customs fees, brokerage fees, or any other taxes that may apply, all of which shall be the responsibility of the Customer. Customer shall pay, or reimburse Catapult for, the gross amount of any present or future sales, use, excise, income, value-added or other similar tax applicable to the price, sale or furnishing of any services or products hereunder, or the Customer shall provide Catapult with evidence of exemption acceptable to the taxing authorities.

Prices are subject to change without notice. The price payable shall be the price specified on the invoice upon delivery of the goods unless the order has been supplied under the terms of a written quotation.

Software Products

All Software provided hereunder is licensed, not sold. Manufacturers of software products supplied by Catapult shall retain ownership of their Software and do not convey, nor does Customer or Customer's final customer obtain any right, title, or interest in, software or firmware, specifications or data furnished or developed by the relevant manufacturer either prior to or in the performance of Customer's order. No schematics or source code shall be furnished, unless pursuant to a separate license as agreed by Catapult.

Use of Software products provided by Catapult, whether owned by Catapult or a third-party manufacturer, is governed by the relevant manufacturers End User License Agreements (EULA) accompanying such Software. Opening product package, clicking the appropriate dialog box, or using any part of the Software, signifies Customer's acceptance of the Terms and Conditions of the relevant manufacturers EULA. If Customer does not agree with terms of EULA Customer should promptly return the package unopened and unused along with any item that was included in the same part number.

All rights and benefits afforded to Catapult under End User License Agreements (EULA) governing the use of Third Party Software purchased from Catapult shall apply equally to the owner of the Third Party Software and its licensors (collectively, the "Third Parties") with respect to the Third Party Software.

Provisions for Services

The Provision of Services by Catapult shall be governed by a Master Services Agreement (MSA) and Statement of Work (SOW) agreed in writing between Catapult and the Customer. If no MSA has been agreed in writing between Catapult and the Customer, then the relevant terms of Catapult's Standard MSA shall apply. If no separate SOW has been agreed in writing between Catapult and the Customer, Catapult shall perform any Services to be provided, and Customer shall make payment to Catapult, in accordance with the schedule and specifications in Catapult's quotation.

Service and Support Programs

Any service or support programs provided hereunder (such as Catapult SLA, GE GlobalCare, GE Acceleration Plan) shall be subject to the specific terms defined for such programs.

Order Cancellation

The Customer shall only be entitled to cancel its order for goods hereunder by providing Catapult written notice at least thirty (30) days prior to the scheduled shipment date, and then only on the basis that the Customer's customer has terminated its requirements for the applicable goods. In the event of order cancellation Catapult shall be entitled to payment of cancellation fees equal to Catapult's actual costs incurred in fulfilling the order plus a reasonable level of profit.

Freight, Handling, Insurance

Unless a written Catapult quotation specifies otherwise, goods are sold F.O.B. Auckland, New Zealand, with any freight and handling charges for the account of the purchaser. Goods that are returned from evaluation or for warranty claims must be consigned freight pre-paid. Goods shall be dispatched uninsured unless otherwise agreed in writing. The Customer shall insure and keep insured the goods to the full price against all risk until payment for the goods in full has been received by Catapult.

Delivery

Catapult shall use its best endeavours to arrange prompt delivery of the goods ordered. Dates given by Catapult for delivery shall be deemed to be indicative only. If delivery of the goods is delayed for any reason whatsoever Catapult shall not be liable in any way for loss of revenue or profits or any consequential loss or damages for failure to deliver on such date.

Catapult shall not be liable for breach of its obligations hereunder to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including but not limited to acts of God, acts (or omissions) of the Customer or its suppliers or representatives, prerequisite work by others, acts of civil or military authority, government priorities, fires, strikes or other labour disturbances, floods, epidemics, war, terrorism, riot, delays in transportation, or inability to obtain or delay in obtaining, due to causes beyond its reasonable control, suitable labour, materials, or facilities, including any vendor's alleged infringement of third party intellectual property rights. In the event of any such delay, the time of performance shall be extended for a period equal to the time lost by reason of the delay. In the event Catapult is delayed by acts of the Customer or by prerequisite work by other contractors or suppliers of the Customer, Catapult shall be entitled to an equitable price adjustment in addition to extension of the time of performance.

Export

If Customer exports (or re-exports), directly or indirectly, any Products or technical data supplied hereunder or any portion thereof, it is Customer's responsibility to assure compliance with U.S., New Zealand and other applicable export control laws and to obtain any required licenses or approvals in its own name. The Customer is also responsible for the accuracy and completeness of any information or certification provided by Customer for purposes of export control compliance.

Returns

Catapult will not accept the return of goods already invoiced unless any such return is arranged in advance. Where Catapult accepts returned goods a 10% restocking fee may be levied. Approval for credit returns must be requested on the Catapult Return Authority (RA) form available from Catapult, within 21 days of receiving the goods. Approval for credit is at Catapult's exclusive discretion and any goods approved for return must be:

- Returned to Catapult Software within 7 days of receiving RA approval
- Returned free into Catapult's store with all costs including the original shipping costs to the Customer being payable by the Customer.
- In "as new" condition in the manufacturer's original container, unsoiled and undamaged.

No credit will be issued for:

- Custom made Goods specifically developed for the Customer.
- Goods received without an approved RA

Payment

Payment of any invoice or account with Catapult must be by the due date.

If at any time Catapult determines that the Customer's financial condition does not justify continued performance on the terms of payment previously agreed upon, Catapult may require full or partial payment in advance or shall be entitled to suspend work or terminate the agreement without liability and without obligation to notify the Customer. In the event of the insolvency of the Customer or in the event any proceeding is brought by or against the Customer, voluntarily or involuntarily, under the bankruptcy or insolvency laws, Catapult shall be entitled to suspend work or terminate the agreement without liability therefor.

In respect of the outstanding payment, the Customer shall, based on the amount of outstanding payment, pay to Catapult the default interest at the rate of 0.1% per day, or at the highest rate as permitted by the applicable law at the time (whichever is the higher shall apply), until all outstanding payment has received in full by Catapult. And, the Customer shall pay, indemnify and save Catapult harmless from any and all costs and expenses of Catapult's collections efforts including all reasonable attorney's fees, legal fees such as litigation fees and costs associated with compromises and judgments arising therefrom. Catapult retains a security interest and right of possession in the goods until Customer makes full payment, and Customer agrees to sign documentation at Catapult's request as reasonably necessary to perfect such interest.

In the event of Catapult instructing its solicitors to collect an overdue amount, or enforce any other obligation arising under these terms, then all costs, charges and legal expenses (on a solicitor and client basis) incurred by Catapult shall be borne by the Customer. All payments made shall firstly be allocated towards such costs and charges thereafter to interest and finally to capital. The Customer hereby agrees that any proceedings, which may be instituted against it for the recovery of any amounts owing to Catapult, or enforcing any other obligation arising under these terms, may be issued in the Court at Auckland, New Zealand, being the place where Catapult's registered office is located and where this contract arose.

Ownership of Goods

Ownership of any goods does not pass until payment in full has been received by Catapult. The Customer shall not charge the goods in any way nor give any interest in the goods while they remain the property of Catapult. Catapult or its agents reserve the right to enter upon and into buildings and premises owned, occupied or used by the Customer where the goods are situated and regain possession of its property as necessary. Any and all costs associated with any recovery are to be borne by the debtor or his agent.

Product Warranties

The warranties and remedies set forth herein are conditioned upon: (a) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of Catapult and/or relevant manufacturer; (b) the absence of repairs, modifications or alterations not authorized by Catapult; and (c) Customer promptly notifying Catapult of any defects and (if required), promptly making the product available for correction, and Catapult's ability to reproduce and observe the claimed defect or non-conformity.

- 1) All Software products provided by Catapult are governed by the relevant manufacturers End User License Agreement (EULA).
- 2) Catapult warrants to the Customer that Catapult manufactured products purchased from Catapult will be free from material defects in material, workmanship and title and will materially conform to any mutually agreed upon specifications (or, if there are no such agreed specifications, the specifications provided by Catapult).

Unless stated otherwise, such warranty shall be for a period of 90 days from date of purchase and, Catapult shall, at its option, repair or replace defective products provided that the products have not been subjected to improper use and that the claim is within the provisions of the warranty applicable to the respective products.

- 3) Catapult warrants non-Catapult manufactured products only to the extent that the manufacturer's warranty allows Catapult to transfer such manufacturer's warranty to Customer. Catapult will pass through to Customer any such warranties. Customer's sole remedy for breach of such warranty shall be the remedy offered by and available from the manufacturer, if any.

Catapult shall have no liability, whether in contract, tort, negligence, or otherwise, to Customer with respect to non-Catapult manufactured products, services or other goods. Consumables (such as batteries, light bulbs, and the like), and failures due to consumables are excluded from all warranties.

The preceding paragraphs set forth the exclusive remedy for all claims based on failure of, or defect in, Products or Services sold hereunder, whether the failure or defect arises before or during the warranty period, and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. Upon the expiration of the warranty period, all such liability shall terminate.

The foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. No implied warranty of merchantability or fitness for particular purpose shall apply. In the event that Catapult is unable to repair or replace the Product in a timely fashion, or any Warranty provided herein otherwise fails of its essential purpose, Customer's recovery of any damage or loss shall be limited to the price paid for the products.

Intellectual Property

Manufacturers of Products supplied by Catapult shall retain exclusive rights to their Products, intellectual property rights (including copyrights, trademarks, patents and trade secrets), schematics, logic diagrams, and manufacturing processes, and to all modifications thereto funded by Customer's purchase order.

Catapult warrants that any Catapult Products sold hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any New Zealand patent. If promptly notified in writing and given full authority, information and assistance, Catapult shall defend, or may settle, at its expense, any suit or proceeding against the Customer based on a claimed infringement which would result in a breach of this warranty, and Catapult shall pay all damages and costs finally awarded therein against the Customer due to such breach, other than damages and costs arising from any wilful infringement by Customer after receipt of notice of the claimed infringement. Catapult shall not be responsible for any compromise or concession made by Customer without the prior written consent of Catapult. In case any Catapult Products are in such suit held to constitute such an infringement and the use for the purpose intended of said products is enjoined, Catapult shall, at its expense and option, either procure for the Customer the right to continue using said products, or replace same with non-infringing products, or modify same so they become non-infringing, or remove the products and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Customer. The foregoing states the entire liability of Catapult for patent infringement.

Catapult shall have no liability under the preceding paragraph if the infringement or claim is based in whole or in part upon (a) a product not of Catapult's manufacture; (b) a product manufactured to Customer's design; (c) a modification of the product not introduced or approved in writing by Catapult; or (d) the interconnection or use of the product in combination with equipment, software or other devices not made or supplied by Catapult. As to any such product, modification, or use in such combination, Catapult assumes no liability whatsoever for patent infringement and the Customer shall hold Catapult harmless against any infringement claim arising therefrom.

Limitations of Liability

- 1) CATAPULT'S LIABILITY ON ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, FAILURE OF A REMEDY TO ACCOMPLISH ITS ESSENTIAL PURPOSE, OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR THESE TERMS AND CONDITIONS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY PRODUCTS OR SERVICES COVERED BY OR FURNISHED UNDER THE CONTRACT OR ANY EXTENSION OR EXPANSION THEREOF (INCLUDING REMEDIAL WARRANTY EFFORTS), SHALL, IN THE AGGREGATE, IN NO CASE EXCEED THE CONTRACT PRICE OF THE PRODUCT OR SERVICE GIVING RISE TO THE CLAIM. EXCEPT AS TO TITLE TO ANY PRODUCTS FURNISHED, ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD.
- 2) IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, FAILURE OF A REMEDY TO ACCOMPLISH ITS ESSENTIAL PURPOSE, OR OTHERWISE, SHALL CATAPULT, ITS EMPLOYEES OR SUPPLIERS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF THE CUSTOMER FOR SUCH DAMAGES, AND THE CUSTOMER WILL INDEMNIFY CATAPULT, ITS EMPLOYEES AND SUPPLIERS AGAINST ANY SUCH CLAIMS FROM THE CUSTOMER'S CUSTOMERS. IF THE PRODUCTS OR SERVICES BEING PROVIDED BY CATAPULT WILL BE FURNISHED BY THE CUSTOMER TO A THIRD PARTY BY CONTRACT OR RELATE TO A CONTRACT BETWEEN THE CUSTOMER AND A THIRD PARTY, THE CUSTOMER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING CATAPULT AND ITS SUPPLIERS THE PROTECTION OF THIS SUBSECTION AND THE PRECEDING SUBSECTION.
- 3) The products to be licensed or sold hereunder are not intended for use in any nuclear, chemical or weapons production facility or activity, any life-support equipment, or other application where failure of the products could lead directly to death, personal injury or severe physical or environmental damage. If so used, Catapult disclaims all liability for any damages arising as a result of the hazardous nature of the application in question, including but not limited to nuclear, chemical or environmental damage, injury or contamination, and Customer shall indemnify, hold harmless and defend Catapult, its officers, directors, employees and agents against all such liability, whether based on contract, warranty, tort (including negligence), strict liability, or any other legal theory, regardless of whether Catapult had knowledge of the possibility of such damages.
- 4) If Catapult furnishes the Customer with advice or assistance concerning any products or systems which is not required pursuant to the agreement, the furnishing of such advice or assistance will not subject Catapult to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

General Provisions

- 1) These Conditions of Sale, along with any terms and conditions or documents referenced herein, contain the complete agreement between the parties, and no modification, amendment, rescission, waiver or other change will be binding on Catapult unless agreed to in writing by Catapult's authorized representative. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Catapult.
- 2) If any part or a provision of this Agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this Agreement will continue to operate.
- 3) A provision or a right under this Agreement or any Service Agreement may not be waived except in writing signed by the party granting the waiver.
- 4) This Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.