

**Affiliates and Subsidiaries of SMART Global Holdings, Inc.**  
**Terms and Conditions of Sale and Use (June 2020)**



- 1. Agreement.** These Terms and Conditions of Sale and Use govern the purchase and use of hardware products (“Hardware Products”), services (“Services”), and the licensing of Licensed Software (as defined in Section 5) (collectively, “Products”) by the purchasing party (“Customer”) from the SMART Global Holdings, Inc. affiliate or subsidiary identified on the related quotation, order acknowledgment, accepted purchase order (the “Purchase Order”), invoice or webpage (“Seller”). Customer and Seller are referred to collectively as the Parties. The Purchase Order and these Terms and Conditions of Sale and Use (collectively, the “Terms”) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous agreements, negotiations, and communications, both written and oral, between the Parties, relating to its subject matter. These Terms prevail over any of Customer’s terms and conditions of purchase. Any additional, different, or conflicting terms or conditions proposed by Customer, including those in any documents issued by Customer, are considered by Seller to be requests for material alterations of these Terms, are hereby rejected, and will not be binding on Seller. Customer is hereby notified of Seller’s objection to all such additional, different, or conflicting terms and conditions. No waiver or amendment of any of the Terms will be binding on Seller unless made in writing and signed by an authorized officer of Seller. Customer will be deemed to have accepted these Terms if Customer: (i) accepts the Terms in writing, (ii) pays (in part or whole) for any Products, or (iii) accepts delivery of any Products.
- 2. Price and Payment; Taxes.** The prices for Products are those set forth in the Purchase Order, and do not include any applicable costs of transportation, insurance, special packaging, or marking or taxes or customs duties (excluding only taxes based on Seller’s income). When Seller has the legal obligation to collect such taxes and duties, Seller will add the same to the invoice and Customer shall pay the same unless Customer provides Seller with a proper tax exemption certificate for each jurisdiction in which taxes otherwise would be due. If Seller is required to pay any such tax or duty, Customer shall promptly reimburse Seller for the total amount of the same. Customer shall pay all amounts in a Purchase Order not later than thirty (30) days from the date of invoice. All payments must be made in U.S. dollars and are non-refundable. Customer shall make all payments via the means and method set forth on the applicable Purchase Order, without right of offset or deduction. Interest will accrue on overdue invoices on the unpaid balance from the original due date of the invoice at the rate of one and one-half percent (1½%) per month, or the highest rate permitted by law, whichever is less, plus any and all costs of collection, including reasonable attorneys’ fees. Customer may not withhold payment for any delay due to a Customer request or issue, or any delay in delivery of required documentation. Seller reserves the right to change Customer’s payment method at any time. Unless and until Customer has fully paid all amounts due with respect to Hardware Products and to secure any or all of its obligations under these Terms and the applicable Purchase Order, Customer hereby grants and pledges to Seller a first priority security interest in all of such Customer’s right, title, and interest in and to any and all Hardware Products or proceeds of the foregoing, whether presently existing or hereinafter acquired and Customer will execute and file any documents to perfect Seller’s security interest and/or mortgage in any Hardware Products.
- 3. Shipment; Ship Date; Variation in Quantity.** Hardware products will be shipped to Customer Ex Works (Incoterms 2010) Seller’s manufacturing facility. Without Customer’s written instructions, Seller shall select the common carrier but shall not assume liability in connection with the shipment, nor shall the common carrier be construed to be Seller’s agent. Transportation charges will be collected on delivery or will be invoiced to Customer. Hardware Products will be shipped in packaging Seller deems appropriate. If Customer requests special packaging, Customer shall pay for and accept responsibility and risk for such packaging. Notwithstanding anything in Customer’s purchase order or in the Incoterms to the contrary, title and risk of loss of or damage to Hardware Products shall pass from Seller to Customer when Seller makes the Hardware Products available at Seller’s facility to the common carrier or to Customer. Seller shall attempt to ship Hardware Products within 30 calendar days of the ship date set forth on a Purchase Order; provided, however, that Seller shall not be charged with any liability for any delays or failure to perform due to force majeure. Shipments may be in installments. Seller’s default or delay in shipping the whole or any part or installment of Hardware Products shall not affect any other portion thereof. Normal manufacturing processing variation of order quantity per line item of Hardware Product(s) is + / -5%. Hardware Products shipped between 95% and 105% of the ordered quantity shall be considered complete, and Customer shall accept and pay for the actual quantity shipped. Customer may not cancel, push-out, or reschedule any Purchase Order, except with Seller’s written consent.
- 4. Returns; Limited Warranty; Disclaimer.** Customer may not return Hardware Products for any reason unless they do not comply with the warranty as set forth in this Section and Customer complies with the procedures of this Section. To the maximum extent permitted by and subject to applicable law, but notwithstanding anything to the contrary in the Terms, all (i) Services, (ii) Hardware Products delivered as “samples,” “design verification units,” and/or “prototypes,”

(iii) those portions of the Hardware Products constituting third-party subsystems, and (iv) Licensed Software (as defined below), in each case are provided or sold “AS IS,” “WITH ALL FAULTS,” and with no warranty whatsoever. Except as otherwise provided herein, Seller warrants that Hardware Products sold will be free from material defects in material and workmanship for the warranty period in Seller’s Product specification or for one (1) year from the date Seller ships such Hardware Products to Customer, whichever is less (the “Warranty Period”). This warranty covers defects arising under normal use and does not include malfunctions, failures, or defects resulting from misuse, abuse, mishandling, accident, neglect, improper or inadequate maintenance, alteration, modification, improper installation or repairs by any party other than Seller. The warranty provided is limited to Customer and may not be assigned. During the Warranty Period, Seller will, at its option and as Customer’s sole and exclusive remedy for any defect or breach of warranty, either credit Customer for, or repair or replace, defective Hardware Products, but only if they are returned to Seller as follows: (1) before shipping defective Hardware Products back to Seller, Customer shall ensure that said Hardware Products are defective and shall obtain a Return Material Authorization (“RMA”) number from Seller; (2) Customer shall include a written explanation for Hardware Products returned and the appropriate RMA number; and (3) Customer shall pay shipping costs for said Hardware Products returned and assume risk of loss of or damage to such Hardware Products during shipping. Seller shall pay shipping costs to return repaired or replaced Hardware Products to the location from where Customer shipped defective Hardware Products to Seller, and Customer shall assume risk of loss of or damage to Hardware Products once Seller delivers such Hardware Products to the common carrier. Hardware Products that are not defective shall be returned to Customer, and Customer shall pay for shipping costs and assume risk of loss of or damage to such Hardware Products during shipping or otherwise. Repair or replacement shall not extend the Warranty Period for said Hardware Products. EXCEPT AS SET FORTH HEREIN, SELLER PROVIDES THE PRODUCTS WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE AND EXPRESSLY EXCLUDES ANY SUCH WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, TRADE USAGE OR TRADE PRACTICE, OR ANY WARRANTIES AGAINST ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, AVAILABILITY, SUITABILITY FOR USE OR PERFORMANCE OF PRODUCTS, WHETHER MADE BY SELLER’S EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THESE TERMS, SHALL BE DEEMED TO BE A WARRANTY BY SELLER FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF SELLER. CUSTOMER’S REMEDIES SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF ALL OTHER REMEDIES.

The Products are not designed for, and Seller has no desire to enter the life support market or to supply its Products for use in life support systems, critical care applications, human implantations, safety critical applications, flight control systems, nuclear facilities or systems, land mines, weapons of mass destruction or any other applications in which Product failure could lead to loss of life or catastrophic property damage, or to expose itself to the risk of loss, expense, cost, liability, litigation, and/or potential adverse verdict or judgment in relation to any such use of Products.

Accordingly, Seller disclaims all such liability, and if Customer or Customer’s customers use or sell Products for use in such applications, it is at their own risk, and Customer shall indemnify, defend, and hold harmless Seller and its affiliates and subsidiaries from and against (i) claims, demands, action, litigation, proceedings, and the like arising out of or related to such use or sale (“Use Claims”), and (ii) liens, liabilities, damages, costs, expenses (including reasonable attorney’s fees), and the like arising out of or related to any Use Claim.

**5. Licensed Software Terms; Proprietary Rights.** The Licensed Software does not include any rights to or in source code. The Licensed Software is licensed, not sold. Unless otherwise agreed to in a separate signed software license agreement between Seller and Customer, the following terms and conditions will apply to the on-premises software, software provided as a service, and firmware in all forms, as applicable, including any documentation provided by Seller under these Terms (collectively, “Licensed Software”), subject to Customer’s payment of the amounts due on an applicable Purchase Order and compliance with the restrictions and obligations set forth in this Section. For on-premises software (meaning it is installed on Customer’s equipment and executes locally) or firmware, Seller grants Customer a non-exclusive, non-sublicensable, and non-transferable license to use such Licensed Software for Customer’s internal business purposes, or for firmware, solely as pre-configured by Seller and pre-installed on the applicable Hardware Product. Such license will have the term set forth on the applicable Purchase Order and shall renew (if applicable)

pursuant to the terms set forth on such Purchase Order. For software hosted as a service by Seller (meaning it is installed on Seller's equipment and Customer accesses its functionality through a web portal or similar interface) (a "Hosted Service"), Seller shall use commercially reasonable efforts to provide Customer with access to the Hosted Service. Customer's access to the Hosted Service will be limited to the term set forth on the applicable Purchase Order and shall renew (if applicable) pursuant to the terms set forth on such Purchase Order. In connection with Customer's access to the Hosted Service, Customer hereby grants Seller a non-exclusive, royalty-free, fully paid-up, sublicensable (through one or more tiers of sublicensees), and transferable license to use, reproduce, create derivative works of, distribute, perform, and display the data, links, information, media, content, or materials provided, disclosed, posted, or delivered by Customer via the Hosted Service ("Customer Content") for the purpose of (i) providing the Hosted Service and (ii) developing, maintaining, supporting, or improving the Hosted Service. Without Seller's express prior written agreement, Customer shall not (and not allow, authorize, or assist any third party to): (i) modify, adapt, translate, create derivative works of, reverse engineer, decompile, disassemble, or attempt to derive the source code of, any part of the Licensed Software; (ii) sell, sublicense, distribute, or lease any part of the Licensed Software; (iii) publish or otherwise disclose to any third party any results of any benchmark or other performance tests of the Licensed Software; (iv) remove, alter, or obscure any proprietary rights notices contained in or affixed to the Licensed Software; or (v) access, or use any materials, content, technology, or data available via or forming a part of the Licensed Software in order to build a competitive product or service. Except for the limited licenses granted to Customer herein, Seller retains all right, title, and interest in and to specifications, designs, engineering details, discoveries, inventions, patents, copyrights, trademarks, and trade secrets in the Products including all related intellectual and proprietary rights relating to the Products. Except as expressly set forth herein, these Terms and the sale of Products by Seller do not confer upon Customer a license under any patents, trade secrets, trademarks or copyrights. Customer shall comply with Seller's then-current Acceptable Use Policy in effect from time to time for the applicable Licensed Software (as posted on Seller's website). Source code related to Licensed Software requires a separate Source Code License Agreement. Included Open Source Software (OSS or FOSS) will be disclosed and the related license will be made available for execution by Customer upon written request.

**6. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL SELLER BE LIABLE FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR SPECIAL DAMAGES, OR FOR LOST PROFITS OR LOSS OF BUSINESS, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS HOWEVER CAUSED, AND UNDER ANY LEGAL THEORY. IN NO EVENT WILL SELLER'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR ANY PURCHASE ORDER OR OTHER TRANSACTIONS EXCEED THE LESSER OF \$1,000,000.00 OR THE TOTAL AMOUNT PAID BY CUSTOMER TO SELLER HEREUNDER FOR THE PRODUCTS OR SERVICES ACTUALLY GIVING RISE TO SUCH LIABILITY (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN SUCH ACTION) DURING THE PRECEDING 12 MONTHS.

**7. General Provisions.** The U.N. Convention on Contracts for the International Sale of Goods shall not apply to these Terms. These Terms, and any disputes arising from or relating thereto, will be governed by the laws of the State of California without reference to its conflict of laws principles. The Superior Court of California for the County of Alameda (or if there is exclusive federal jurisdiction, the United States District Court for the Northern District of California) will have exclusive jurisdiction and venue over any dispute among the Parties arising out of or relating to these Terms, and Customer hereby consents to the jurisdiction of such courts. The prevailing party in any action or proceeding to enforce or interpret these Terms shall be entitled to recover its reasonable expenses including without limitation attorney's fees and fees on any appeal. Customer may not subcontract, assign any of its rights or delegate any of its obligations under these Terms without Seller's prior written consent, which may be withheld at Seller's sole discretion. Seller may assign these Terms in its sole discretion without consent. Customer shall comply with all applicable laws, regulations, orders, or other restriction in connection with the activities contemplated under these Terms, including export and import laws. Any waiver of a right by Seller or default by Customer will not be deemed to be a continuing waiver of such right or default. If Products purchased are sold, or are incorporated into products that are sold, under a U.S. Government contract, Seller rejects provisions or clauses required to be passed on to Seller pursuant to said contract and such provisions or clauses shall not be deemed included or binding on Seller unless accepted in writing by Seller's authorized representative. No waiver by Seller will be effective except when signed by a duly authorized representative of Seller. These terms may be modified from time to time as posted on Seller's website. If any provision of these Terms

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is determined to be invalid, illegal, or unenforceable, such provision will be enforced consistent with the stated intention of the Parties and the remaining provisions will remain in full force and effect.

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