

## Terms & Conditions USA

General Terms and Conditions for the Supply of Products

Applicable for all contracts closed with Swissbit North America

Status: June 4, 2018

### 1. General

**1.1** The following Terms and Conditions shall be binding for all sales of Goods by Seller, unless expressly excluded by Seller. Offers to sell Goods from Seller to Buyer, irrespective whether in response to a purchase order or a request of quotation, is conditioned on Buyer's acceptance of these Terms and Conditions. Placing an order, accepting an offer, or receiving a delivery shall be construed as acknowledgment and acceptance of these Terms and Conditions. Terms and conditions of the Buyer that diverge from the following Terms and Conditions shall not be binding unless and only to the extent they have been expressly accepted by Seller in writing.

**1.2** If Seller's Goods include any standard software which is available on the market, including related documentation, the relevant terms of delivery and licensing conditions of the third-party suppliers concerned shall apply exclusively when Buyer has had the possibility to take notice of their content.

**1.3** As used herein, the term "Seller" shall apply to Swissbit North America Inc., the term "Goods" shall refer to any and all products or services purchased from Seller, and the term "Buyer" shall refer to the purchaser of Goods from Seller.

**1.4** Seller's Terms and Conditions may be revised from time to time. Any ongoing contract, order or delivery will be governed by the Terms and Conditions in place at the time said contract was executed or acceptance of order occurred.

### 2. Contracts and Advertising Prospectuses

**2.1** Except as provided otherwise, advertising prospectuses and catalogues are for informative purposes only and are not intended to be binding commitments of Seller's products. Data contained in technical documents shall be binding only if expressly guaranteed.

**2.2** Offers that do not stipulate an acceptance period shall not be binding.

### 3. Prices

**3.1** Except as provided otherwise, Seller's prices are deemed to be in US Dollars. For deliveries made to Buyers, prices applied are prices ex works (i.e. EXW respective stock location in Germany) pursuant to INCOTERMS 2010, excluding federal, state and local sales, use, excise and similar taxes and charges, which shall be the responsibility of the Buyer.

**3.2** If determination of Seller's prices was based on costs and fees that are beyond Seller's control (including currency parities or governmental taxes, charges, fees, customs duties, market price of components, parts, raw materials, costs for testing and security expenses, etc.) and increase between submission of the offer and the contractually agreed delivery date, the Seller shall be entitled to adjust these prices and other terms of supply accordingly. Seller will provide prior notice to Buyer before applying revised prices.

**3.3** Seller shall obtain trade credit insurance for Buyer's order(s). Seller may reject any order, withdraw from any contract and withhold any delivery to the extent Seller is not able to obtain a trade credit insurance covering the order(s) or outstanding deliveries without any liability for the Seller.

**3.4** Prices in order confirmations are applicable for Goods and quantities specified in the order. Changes in quantities and Goods will result in changes of prices.

### 4. Terms of Payment

**4.1** Except as provided otherwise, Seller's invoices shall be due for payment immediately and shall be settled no later than 10 days from the date of invoice, without any cash discount or other deduction allowed. Payments shall be made into any one of Seller's bank accounts shown on Seller's invoice(s), matching the invoiced currency. Payment shall be deemed to have been effected as soon as the amount due has been put to the credit of any one of Seller's accounts in the currency shown on the invoice and is at Seller's free disposal. Discounting or offsetting of such claims against counter-claims raised by Buyer is not admissible.

**4.2** If Buyer is in default with respect to the agreed terms of payment, it shall be liable, without notice, to pay default interest at the maximum legal limit allowed from the 11th day after the date of invoice.

### 5. Designs & Technical Documents

Each party reserves all rights with respect to designs, documents and software handed over to the other party. The receiving party acknowledges these rights. Subject to the previous and to explicit authorization in writing by the other party, the receiving party shall not make such designs, documents and software accessible to any third parties and shall use them exclusively for the purpose for which it has received.

### 6. Reservation of Title

**6.1** Seller shall remain the owner of all Goods delivered by Seller until Seller has received payment in full of the agreed amount. On conclusion of the contract, Buyer authorizes Seller to reserve title pursuant to the laws of the countries concerned, in the public registers kept for this purpose by the competent authorities of the respective countries, and to complete all relating formalities.

**6.2** Until paid in full Buyer shall, at its sole expense, maintain the Goods, and obtain all necessary insurance to protect Goods against theft, loss, fire, water and other risks, and shall store Seller's Goods separated from materials and goods belonging to Buyer or a third party, and shall take all further measures to ensure that Seller's title is not prejudiced in any way whatsoever.

**6.3** All benefit and risk of loss shall pass to Buyer when Goods leave Seller's facility and are delivered to the carrier. If delivery is postponed at Buyer's request, or delayed for any reason beyond Seller's control, the risk of loss shall pass to Buyer at the time the delivery of Goods was originally scheduled to leave Seller's facility. Thereafter, Goods shall be stored and insured for the account and at the risk of Buyer. Retention of title shall in no way affect the risk of loss after delivery to carrier.

**6.4** Processing and conversion of purchased Goods shall be conducted in the name of and on behalf of Seller. Seller's right to the Goods shall continue on processed and converted item(s). If Goods are processed with other items not belonging to Seller, Seller acquires co-ownership of the new item in the ratio of objective value of Seller's Goods to the other processed items at the time of processing. The same applies in case Seller's Goods are mixed with or integrated into other items. If mixing or integrating takes place in such a way that Seller's Goods are to be considered the main component, it is agreed that Buyer transfers to Seller a proportionate co-ownership.

## **7. Delivery Period**

**7.1** Provided all administrative formalities have been completed and complied with the agreed delivery period shall start on receipt of a written order whose technical and commercial aspects shall have been clarified. The delivery period shall be deemed to have been observed if, on its expiration, delivery has been effected, or Buyer has been informed that the supplies are ready for delivery.

**7.2** Seller reserves the right to adjust delivery dates for any portion of the order, if necessary. In such case Seller will give notice to Buyer listing adjusted delivery dates.

**7.3** A reasonable delay is not considered reason to terminate the order or claim damages.

**7.4** If Buyer fails to comply with the terms of payment, Seller shall be entitled to withhold delivery of Goods without any liability to Buyer until all outstanding debts are fulfilled. In such circumstances, the delivery period starts anew when full payment has been received.

## **8. Inspection, Acceptance & Rejection of Goods, Claim Notification**

**8.1** Each delivery shall be inspected by Seller to the extent customary before leaving Seller's facility. If Buyer requires additional inspection, such shall be agreed to under a separate agreement, and shall be conducted at Buyer's expense.

**8.2** Buyer shall inspect Goods received within ten (10) days after delivery of Goods to the first destination Goods are available for Buyer's inspection. Buyer shall notify Seller immediately in writing in the event defects exist. Failure to notify Seller in writing of any defects constitutes acceptance of the Goods. Any other claim respecting the condition of Goods, compliance with specifications, or other defects that would not be recognizable during inspection must be made no later than ninety (90) days after such has come to Buyer's attention. All claims must be made only for substantial cause, be in writing, must specify the reason(s) for the claim, and must follow the RMA procedure of Seller. Failure to notify Seller of any claim within the time period specified in this Section shall constitute a waiver and shall bar any claim.

**8.3** If any Goods should arrive at Buyer's destination in a damaged condition or should a shortage exist, the damage or shortage shall immediately be reported to the delivering carrier and Seller. In case of damaged Goods, a joint inspection of the loaded carrier shall be arranged with representatives of the carrier and Seller. Where the carrier's equipment cannot be held for inspection, Goods shall be unloaded, protected and held for joint inspection, and shall be documented in detail by photograph. Before unloading, the alleged damage or shortage shall be noted on the carrier's delivery receipt and signed by the carrier's agent.

**8.4** Buyer shall set aside, protect, and hold any Goods subject to a claim without further processing until Seller has an opportunity to inspect such Goods, and has advised Buyer of the disposition of the Goods. No Goods, in any event, shall be returned without first obtaining written consent from Seller. No allowance will be made to Buyer for storage, materials or labor involved in the movement of rejected Goods from the facility of Buyer, Buyer's processor or Buyer's storage facility.

**8.5** Seller shall remedy defects/deficiencies that have been notified pursuant to Section 8.2 above, at Seller's discretion, either by consignment of replacement Goods, issuing of credit note or via repair of the damaged Goods, as soon as reasonably possible. Buyer shall grant Seller reasonable time and opportunity for subsequent remedial action. Insofar as defective Goods have to be replaced, such defective Goods shall pass into Seller's ownership.

**8.6** If Buyer requests deferral of shipment, fails to accept shipment, fails to pick up Goods, or otherwise fails to provide information, material or documentation necessary for delivery of Goods, and as a result Goods are placed in storage, Seller may charge Buyer reasonable storage fees commencing five (5) days after Seller's notice to Buyer of the availability of Goods.

## 9. Warranty

**9.1** Goods shall be manufactured pursuant to Seller's standard manufacturing variations and tolerances. Warranty is only granted to the original Buyer having procured the Goods from Swissbit AG, its affiliates or authorized distributors. The warranty is non-transferrable. Save as expressly provided otherwise, the warranty period (period of guarantee) is defined as follows:

PRODUCT	WARRANTY PERIOD	REMARKS
INDUSTRIAL GRADE USING SLC (SINGLE LEVEL CELL) NAND FLASH ARCHITECTURE:  <ul style="list-style-type: none"> <li>✓ SD/SDHC/SDXC Card</li> <li>✓ MicroSD/microSDHC Card</li> <li>✓ CompactFlash (CFC)</li> <li>✓ CFast Card</li> <li>✓ 2.5 INCH SSD</li> <li>✓ MO-297, MO-300, M.2 SSD</li> <li>✓ Embedded USB (eUSB)</li> <li>✓ USB Flash Drive/Key</li> </ul>	FIVE (5) YEARS OR WHEN ENDURANCE LIMIT IS REACHED, WHICHEVER OCCURS FIRST	The "ENDURANCE" is specified in "TBW" and "Terabyte Written Limit". This value is strongly dependent on the application type, the preconditioning and usage of the drive. Swissbit guarantees TBW values for defined workloads consistent with industry-wide standards (JEDEC standard definition) and generally refers to total possible terabytes written over the life of the drive. The TBW or Program/Erase Cycles for each product is set forth in the applicable Published Specifications. For workloads that differ from the specified conditions the guaranteed TBW value is reached when 100% of the respective P/E cycles are reached.
INDUSTRIAL GRADE USING MLC (MULTI LEVEL CELL) NAND FLASH ARCHITECTURE:  <ul style="list-style-type: none"> <li>✓ SD/SDHC/SDXC Card</li> <li>✓ MicroSD/microSDHC Card</li> <li>✓ CompactFlash (CFC)</li> <li>✓ CFast Card</li> <li>✓ 2.5 INCH SSD</li> <li>✓ MO-297, MO-300, M.2 SSD</li> <li>✓ Embedded USB (eUSB)</li> <li>✓ USB Flash Drive/Key</li> </ul>	THREE (3) YEARS OR WHEN ENDURANCE LIMIT IS REACHED, WHICHEVER OCCURS FIRST	
Embedded Storage component:  <ul style="list-style-type: none"> <li>✓ e.MMC</li> <li>✓ uSSD</li> <li>✓ M.2 NVMe</li> <li>✓ UFS</li> </ul>	ONE (1) YEAR OR WHEN ENDURANCE LIMIT IS REACHED, WHICHEVER OCCURS FIRST	

The warranty period shall begin with departure of Goods from Seller's facility. For all other products, specifically non-Swissbit-branded products, the warranty period shall be twelve (12) months. If delivery of Goods is delayed for reasons beyond Seller's control, the warranty period shall start after notification of readiness for delivery.

**9.2** All warranty rights shall be null and void if Buyer or any third parties effect repair work or modifications to Goods without Seller's prior written consent, or if Buyer, in the event of a defect, fails to take immediate steps to mitigate resulting damage and provide Seller the opportunity to remedy such defect.

**9.3** Seller shall replace, repair or refund at Seller's discretion and as soon as reasonably possible, upon written notification by Buyer to Seller, all Goods which have been verified as defective or unserviceable due to faulty material or construction, prior to the end of the warranty period. Faulty Goods must be sent to Seller upon request. Goods that have been replaced shall become Seller's property. To return Goods to Seller, Buyer must follow the RMA procedures of Seller. Buyer shall contact Seller, verify the purchase from Seller, its affiliates or authorized distributors and request a RMA number by completing the form and sending it to: [rmapool@swissbit.com](mailto:rmapool@swissbit.com).

Within one (1) week from completing and validating the RMA request Buyer will receive a RMA number which will be valid for thirty (30) days. Buyer shall refer to the RMA number when returning Goods to Seller. Buyer will be responsible for all shipping charges on Goods returned to Seller, while Seller will be responsible for all shipping charges on Goods returned to Buyer.

**9.4** Warranted characteristics are only those characteristics that have been expressly qualified as such by the respective specifications and shall be guaranteed up to the expiration of the warranty period. If warranted characteristics are missing, in full or in part, Buyer shall be entitled to request subsequent improvement to the Good(s) to be implemented by Seller within a reasonable time period. If attempt(s) to improve the Goods prove(s) unsuccessful or succeed(s) in part only, Buyer shall be entitled to an adequate price reduction. Should a defect be of such significance that it cannot be rectified within a reasonable period of time, and if the Goods cannot fulfill the agreed purpose for which Goods were ordered, Buyer shall be entitled to reject any of the defective Goods supplied, or, if a partial acceptance cannot reasonably be expected for economic reasons, to withdraw from the Contract. Seller shall only refund such amounts as have been paid to Seller for such Goods in respect of which the withdrawal from the Contract has taken place.

**9.5** Seller does not warrant and has no liability for damage which cannot be verified to be due to faulty material or construction, or imperfection in the execution, such as degradation due to ordinary wear and tear, damage resulting from insufficient maintenance, non-compliance with operating instructions, excessive strain, inadequate means of operation, chemical effects, abuse, alterations, problems with electrical power, neglect, improper testing and installation, mishandling during transportation, acts of nature, repair, modification, construction or assembly work not executed by Seller, or due to other causes beyond Seller's control. Any failure caused by exceeding the natural program and erase cycle limitation of Nand flash is also not covered by the warranty.

**9.6** With respect to faulty software, warranty claims shall only be valid if such fault can be reproduced using the unaltered original software version and supported by detailed documentary evidence. In the event of loss of, or damage to data and/or data storage media, Seller's warranty shall not include expenditures relating to the restoration of the lost data or storage media.

**9.7** Seller makes no other or further warranties, express or implied, concerning Goods, and excludes and disclaims all warranties for merchantability, fitness for a particular purpose other than explicitly stated in the order, performance and usage, and for title and/or intellectual property rights. Buyer's exclusive remedy with respect to the conformance of any Goods is limited to replacement, repair and credit against the purchase price as stated above.

#### **10. Exclusion of Liability**

**10.1.** Buyer expressly accepts that Seller and its suppliers will under no circumstances be liable for any indirect, special, incidental, consequential, future or punitive damage whatsoever, whether based in tort, under warranty, or otherwise in law or equity, including damage to or loss of data, property, equipment, plant, system, loss of profits, revenue, downtime or sales, increased costs of any kind, or claims of customers of Buyer. Seller's liability shall not exceed the purchase price of Goods contained in the order. Buyer's limited warranty of replacement or return or credit on the purchase price are Buyer's sole and exclusive remedies. Seller and Buyer expressly agree to this allocation of risk and the price stated for the Goods is a consideration in limiting Seller's liability.

**10.2** Seller assumes no obligation or liability for any technical advice furnished by Seller, including without limitation, technical advice with respect to the use of Seller's Goods, all such technical advice being given and accepted at Buyer's risk.

**10.3** Seller will not be liable for any delay or inability in performance resulting in whole or in part from causes beyond its reasonable control in the reasonable conduct of its business, including but not limited to fires, floods, earthquakes or other catastrophes; acts and omission of the other party or of civil or military authorities; unusually severe weather conditions; strikes, lockouts or labor disruptions; wars, terrorist attacks, riots or embargo delays; mill conditions; shortages of transportation or other equipment, fuel, energy, labor or materials; delay in delivery from seller's suppliers; commercial impracticability; epidemics, quarantine restrictions, or any other circumstances or causes or acts of God or public enemy. The time of performance of any such obligation shall be extended for the period lost by reason of delay, provided that if such delay exceeds ninety (90) days, Buyer may cancel the applicable order for the Goods upon written notice to Seller.

**10.4** Disks and memory products are subject to risks inherent in power failure and degradation over time which can result in bit and meta data corruption or loss and total device failure, and therefore in loss of data. Buyer shall notify users that they assume all responsibility and risk for back-up, damage, loss, storage, and use of all data saved in the products of Seller. Buyer shall provide users with a disclaimer for data loss associated with Seller's products. Buyer will indemnify, defend and hold harmless Seller from any claims associated with such loss of data, such as damages in third party claims, attorney's fees and costs of lawsuits.

**10.5** Seller's Goods, if not expressly qualified as such, are not designed, and intended for use or resale as online equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft safety equipment or communication systems, life support systems or any other application where product failure could directly cause death, personal injuries or severe environmental damage. Seller will not be liable for damages resulting from malfunction of Goods when used in such high-risk activities. Buyer will indemnify, defend and hold harmless Seller from any claims associated with such loss of data, such as damages in third party claims, administrative proceedings, fines, attorney's fees and costs of lawsuits.

#### **11. Export Regulations**

Except as expressly provided otherwise, re-exportation of Goods is permissible only in accordance with the terms set forth in the End-Use Certificate (EUC) used for presentation to the Export Control Authorities of the Federal Republic of Germany, accepted by Buyer by signing the EUC.

#### **12. Indemnification**

Buyer agrees to indemnify and hold Seller harmless from all liability, damages, or costs, including attorney's fees, relating to improper Buyer's use of Goods, breach of agreement by Buyer, negligence and willful misconduct of Buyer with its performance under this agreement, and any personal injury, death or any other damage to or loss of data or construction property attributable to Buyer's handling, storage, transportation, placement or use of the products or otherwise arising from Buyer's performance under this agreement. If Goods are manufactured in accordance with Buyer's designs, blueprints, drawings or specifications, Buyer agrees to indemnify and hold Seller harmless from all liability, damages and costs, including attorney's fees, arising out of patent infringement claims.

#### **13. Applicable Law**

These Terms and Conditions shall be governed by and construed in accordance with the law of New York, including the New York Uniform Commercial Code, without regard to conflict of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Law on the International Sale of Goods of April 11, 1980), shall be excluded.

#### **14. Venue**

Buyer waives all rights to trial by Jury in any litigation arising from or related to these Terms and Conditions; Buyer submits to the jurisdiction of the State and the Federal Courts of New York and waives any right to assert that any action instituted by the Buyer in any such court is in the improper venue or should be transferred to a more convenient forum.

#### **15. Severability**

If any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, the remaining provisions hereof will be unaffected thereby and remain valid and enforceable as if such provision had not been set forth herein. The parties agree to substitute for such provision a valid provision that most closely approximates the intent and economic effect of such severed provision.

#### **16. No-waiver**

Seller's failure to enforce or declare a default or breach with respect to Buyer's nonperformance of these Terms and Conditions shall not be construed to be a waiver of Seller's right to insist on strict compliance of any other term or condition or, on a subsequent occasion, with respect to that particular term or condition.

#### **17. Modification**

These Terms and Conditions shall not be varied except in writing and signed by both parties.

**18. Confidentiality**

Information one party received from the other party in connection with any order under this agreement is deemed to be confidential except if expressly denied by the party giving the information, if said information is available in public sources, if the addressee acquired this information also from a third party or disclosure of information is requested by law. Confidential information may not be used except in the performance of the agreement, nor disclosed to any third party without prior mutual consent and needs to be protected such as own confidential information and with reasonable care. Access to confidential information will only be granted to employees who need to know this information while supporting the performance of the agreement. Provision of confidentiality survives the termination of the agreement by three (3) years.

**19. Compliance with law**

Within the performance of the agreement Buyer will comply with all applicable laws, rules and regulations, including but not limited to export laws, anti-money laundering, anti-corruption and anti-trust regulations and intellectual property rights.

**20. Assignment**

No rights, duties, agreements or obligations hereunder may be assigned or transferred by Buyer without prior written consent of Seller.

**21. Electronic Communication**

The parties acknowledge electronic communication to be sufficient if the Terms and Conditions demand written communication.