



## Terms & Conditions of Sale

### THE FOLLOWING TERMS AND CONDITIONS ARE TO BE CONSIDERED AN INTEGRAL PART OF THE AGREEMENT

#### 1. General

The sale of products ("Products" or "Goods") or services ("Services") by Felloe Technology Ltd. ("Seller") to Buyer hereunder are subject to these Terms and Conditions. Seller's acceptance of Buyer's order is limited to Buyer's acceptance of these Terms and Conditions and is expressly made conditional on Buyer's assent to any additional or different forms and conditions contained herein. No modifications of, or additions to, these Terms and Conditions will be valid unless expressly agreed to in a printed document on company letterhead signed by an authorized officer of Seller mailed to Buyer. Seller considers any provisions in conflict with these Terms and Conditions contained in any prior or subsequent order or communication from Buyer to be material and hereby objects to any such provisions. Buyer's acceptance of any Products or Services covered by these Terms and Conditions shall constitute acceptance of these Terms and Conditions.

#### 2. Entire Agreement

These Terms and Conditions, together with the payment terms, descriptions of Products or Services, Buyer's name and address and any other information or terms and conditions specifically stated in Seller's offer made in its Proforma Invoice ("PI") constitutes the entire agreement (the "Agreement") between Seller and Buyer with reference to the subject matter hereof. Buyer shall accept Seller's offer only by signing each Proforma Invoice and returning a copy of said signed Proforma Invoice to Seller. By signing a Proforma Invoice Buyer acknowledges that it has read and agrees to these Terms and Conditions in their entirety. Any purchase order issued by Buyer shall be deemed to be for the record keeping convenience of Buyer and shall not add to, delete from, or change these Terms and Conditions.

#### 3. Price

Prices quoted by Seller are exclusive of all taxes, including federal, state and local use, sales, property, import/export, or similar taxes, and Buyer shall pay all such taxes in full or shall reimburse Seller for any such taxes paid by Seller (except taxes levied on Seller's income).

##### 3.1 Price Adjustments

Prices quoted by Seller may be adjusted at the time of delivery in the event of the following conditions. In the event the price is adjusted, Seller shall issue an Invoice reflecting the price increase. Buyer shall promptly pay said Invoice upon receipt. In the event that Buyer fails to pay for said Invoice, Seller shall have the right to apply any future payments (or portion thereof) against said invoice.

**3.1.1 LME MATERIAL INCREASE:** In the event that the Official Price of material on the London Metal Exchange ([www.lme.com](http://www.lme.com)) increases by five percent (5%) as compared to the price one (1) month prior to the date of the signed Proforma Invoice, Seller may adjust the price of the Products at its discretion.

**3.1.2 CURRENCY EXCHANGE RATE INCREASE:** Where the Buyer is paying in US dollars and the exchange rate for US Dollars (USD) to Taiwan Dollars (TWD) has increases by more than five

percent (5%) as compared to the price one (1) month prior to the date of the signed Proforma Invoice, Seller may adjust the price of the Products at its discretion.

**3.1.3 INCREASE IN SELLER'S VENDOR PRICING:** Buyer acknowledges that the price is predicated on Seller's use of vendors. In the event that Seller's vendor's pricing increases, Seller may adjust the price of the Products at its discretion.

**4. PAYMENT TERMS:**

Unless stated otherwise on the Proforma Invoice or Invoice, Buyer shall pay in full at the time of returning the signed Proforma Invoice or receipt of Invoice, whichever shall occur first. Seller's shipment or rendering of all or any portion of the goods or services shall not relieve Buyer of its obligation to pay according to the terms herein. E-mail or faxed Proforma Invoice or Invoices shall be allowed and receipt shall occur on the date the Proforma Invoice or Invoice is e-mailed or faxed. Any payment by Buyer must be made by wire transfer pursuant to the following instructions:

<b>SELLER'S BANK INFORMATION</b> (See Fraud Prevention Warning below):		
	English (英文)	Chinese (中文)
Seller's Name (戶名):	FELLOE TECHNOLOGY LTD.	展翺股份有限公司
Seller's Tax ID No. (統一編號)	60375712	
Bank Name (銀行):	First Commercial Bank Co., Ltd.	第一銀行
Bank Branch (分行代碼 / 服務據點):	4038 Bei Taichung Branch	4038 北台中分行
Bank Address (地址):	First Commercial Bank Co., Ltd. Bei Taichung Branch No. 501, Sec. 1, Taiwan Blvd., Central Dist., Taichung City 40041, Taiwan (R.O.C)	第一銀行 北台中分行 40041 台中市 中區 臺灣大道1段 501號
Bank Tel (服務電話):	+886-4-2223-8111	
International Swift Code:	FCBKTWTP	
Domestic Bank ID (銀行代號):	007	
<b>US Dollar Account</b>		
Seller's Account Number:	4034-0022-773	
<b>TW Dollar Account</b>		
Seller's Account Number (銀行帳號):	4031-0072-012	

**4.1 FRAUD PREVENTION WARNING:** Buyer is cautioned not to pay and immediately contact Seller at +886-4-24624939 if it receives any communication, including a Proforma Invoice or Invoice, that contains bank information that does not match the Seller's banking information shown here. The only means by which Seller will ever change the bank information contained herein is by arranging a live video chat between Seller and Buyer involving mutually known persons representing both Buyer and Seller in which Seller will verbally confirm any changes to Seller's bank information. Buyer hereby agrees that loss resulting from a deviation of the procedures set forth herein for changing Seller's banking information shall be borne solely by Buyer.

**4.2 WIRE TRANSFER FEES:** Buyer shall be responsible for all wire transfer fees. IMPORTANT: Buyer must inform the bank that the "**SENDER PAYS ALL FEES**" to ensure that the full invoice amount is received by Seller.

**4.3 LATE PAYMENT:** A finance charge of 10% compounded daily or the lesser legal rate in Buyer's jurisdiction, will be assessed on all invoices not paid when due.

**4.4 PAYMENT DEFAULT:** In the event that Seller does not receive payment in full thirty (30) days after the date payment is due, the Seller may at its sole election, resell any goods ordered by Buyer. In furtherance of Seller's right to resell goods ordered by Buyer but not paid for, Buyer hereby agrees to grant to Seller and its assigns a royalty free worldwide license to Seller's copyrights, trade dress, brand names, trademarks, intellectual property, know-how, and/or patents. Seller's election to resell the goods shall not relieve Buyer of any amounts still owed to Seller nor shall it limit in any way any other rights of Seller or obligations of Buyer.

## **5. DELAY**

Buyer acknowledges that time is **NOT** an essential element of the Agreement and that all delivery dates are estimates of approximate dates of delivery and do not constitute a guarantee of delivery on such dates. In no event shall Seller be liable for any delay in delivery. All delivery times, regardless of method of communication, are estimates only and shall not bind or be used as evidence against Seller concerning Seller's performance of any obligation under this Agreement.

## **6. SHIPMENT TERMS**

All shipment terms shall be EX WORKS as governed by INCOTERMS 2010. Title and all risk of loss with respect to any Products shipped shall pass to Buyer when such goods are delivered to the carrier.

## **7. CANCELLATION**

- 7.1. TIMING & METHOD:** Cancellation of orders for Products or Services must occur within five (5) calendar days of Seller's receipt of the signed Proforma Invoice and shall be in the form of a written notification to Seller.
- 7.2. NO CHANGE ORDERS:** No change orders or modifications shall be accepted by Seller under any circumstance.
- 7.3. BUYER'S OBLIGATIONS:** Buyer acknowledges that Seller's Products or Services are on firm order and not subject to modification or cancellation beyond the terms provided herein. After expiration of the time for cancellation, Buyer agrees to pay in full for the Products or Services regardless of the stage of completion.
- 7.4. NO WAIVER:** Seller's rights and remedies under this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

## **8. OVERPRODUCTION**

In the event that Seller over produces the Goods described in this Agreement, Seller shall notify Buyer of the overproduction and identify the type and quantity of Goods overproduced. Buyer shall accept and pay for said goods according to the terms of the Invoice.

## **9. WARRANTIES**

Felloe Technology Ltd. ("Seller") warrants that at the time of the transfer of products furnished by Seller to the carrier and/or Buyer, the products will be free from defects in material and workmanship and will conform to the specifications and or drawings set forth in writing on the Proforma Invoice of the Seller. Except for latent defects, all products furnished shall be deemed to be finally accepted by Buyer unless Seller receives notice within a reasonable time period, not to exceed 30 days after receipt of products by the Buyer. As to latent defects, the Buyer may reject products within 90 days of transfer to the carrier and/or Buyer. There shall be no warranties which extend beyond the description on the face hereof. The warranties in this Limited Warranty are the only warranties applicable to the products. There are no other warranties, representations or conditions of any kind, express or implied, statutory or otherwise, with respect to the products supplied hereunder including, without limitation, any implied warranties of merchantability of fitness for a particular purpose.

### **9.1. Warranty Provisions**

There shall be no continuing Warranty by Seller for defects attributable in whole or in part to normal wear and tear or to factors beyond the control of the Seller, including but not limited to:

- a) Improper installation(s) and or use(s) of the products.
- b) Use in improper application(s) or condition(s) or in conjunction with improper material(s).
- c) Improper transporting of the product(s).
- d) Failure to adhere to applicable instructions of the Manufacturer concerning the proper handling, installation, testing and use of the product(s).
- e) Failure to adhere to applicable standards set forth by local laws, codes, or regulations and the applicable industry standards.
- f) Any other improper activities not listed above or damage caused by the fault or negligence of anyone other than Felloe Technology Ltd.
- g) Once the material is altered, converted, and or utilized in the production of an end product.
- h) Where abnormal environmental and or operating conditions are encountered by the Buyer's end item or product.

### **9.2. Seller's Liability**

The Seller's liability for defective and or non-conforming products is limited to the replacement of the products pertaining to the specific order or the refund of the purchase price as Seller may elect. Seller shall not be liable for any shipping charges for any replacement products. Defective and or non-conforming products shall not be returned to the Seller without Seller's prior written consent and permission. Under no circumstances shall the Seller be liable for lost profits, loss of goodwill, loss of business opportunities, damage to reputations, special damages, indirect damages, delay damages, punitive damages, exemplary damages, consequential damages, incidental or other damages, including without limitation any costs incurred in connection with the removal or reinstallation of allegedly defective products. The remedies expressed are exclusive. All claims for defective or non-conforming products shall be made in writing and submitted within the period specified in this Clause 9.

### **9.3. Claims**

Every claim under this Warranty shall be void unless it is made in writing and received by Felloe Technology Ltd. located at No. 58, Ln. 961, FuKe Rd., Xitun Dist., Taichung City 407 within 10 days of the date the defect was discovered, and, in any event, within a time period not to exceed 30 days after receipt of the products by the Buyer. No claim under this Limited Warranty will be valid unless the following items are submitted within a time period not to exceed 30 days after receipt of the products by the Buyer.

- a) Proof of purchase with the date thereof as well as a description of the alleged defect in reasonable detail is presented to the satisfaction of Felloe Technology Ltd.
- b) Written permission by the Seller to Buyer.
- c) Felloe Technology Ltd. and or its Third Party designee is given the opportunity to inspect the allegedly defective products.
- d) At the request of Felloe Technology Ltd., representative samples of the allegedly defective products are returned to Felloe Technology Ltd. in accordance with Seller's instructions.

### **9.4. Revisions**

Felloe Technology Ltd. reserves the right to revise this Limited Warranty without notice at any time.

### **9.5. Exclusive Warranty**

THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **9.6. WARRANTY REMEDIES**

Buyer's sole and exclusive remedy for non-conformance of Services or Products shall be the re-performance of any nonconforming Services or Products, providing the Seller is given written

notice within the warranty period. Seller shall not be liable for any other expense connected with correction or re-performance of any Service or for any special, extraordinary, incidental, or consequential damages. Buyer's sole and exclusive remedy for a failure of Seller's Product due to defects in material and workmanship during the warranty period, at the Seller's election, shall be repair or replacement of the defective Product at the Seller's factory or warehouse. To request the provisions of this remedy, Buyer must provide a written notice to Seller within the warranty period, establish the dates of purchase, installation and removal from service, document operating hours, and provide a description of the claimed defect.

Seller reserves the right to demand return of the claimed defective Products to its factory or warehouse for inspection at Buyer's expense. The limited warranty shall not include any transportation charges, or costs of disassembling or installation, equipment downtime, or any liability for direct, indirect or consequential damages or delay.

#### **10. NON-DISCLOSURE AND CONFIDENTIALITY:**

Buyer acknowledges and agrees that in the course of conducting business with Seller, Buyer may become exposed to proprietary, confidential, sensitive, non public, or trade secret information that may include but not limited to Proposals, Drawings, Prints, Specifications, Trade Secrets, Methods, Materials, Technology and other Technical Data ("Confidential Information"), Buyer shall hold Confidential Information in strict confidence and shall not directly or indirectly disclose Confidential Information to any third party or make use of Confidential Information, except as ordered by any court or any other government body of competent jurisdiction; provided however that Buyer shall give Seller prior written notice of any such disclosure and shall cooperate with Seller if Seller seeks a protective order or similar protection as Seller may deem appropriate to preserve the confidential nature of such information. The restrictions contained in this section are necessary for the protection of the business and goodwill of Seller and are considered by Buyer to be reasonable for such purposes. Buyer agrees that any breach of this section will cause Seller substantial and irrevocable damage and therefore in the event of any such breach, in addition to such other remedies which may be available, Seller shall have the right to specific performance and injunctive relief, as well as attorneys' fees and costs, for enforcing this section. Buyer agrees to take all necessary steps to ensure that all of its employees and subcontractors who would be exposed to the Confidential Information are aware of this section and fully comply with the restrictions set forth herein.

#### **11. NON-CIRCUMVENTION / NON-COMPETE:**

Seller acknowledges that Seller's vendors are confidential and Buyer shall not procure, or seek to procure, Goods or Services in the same field as those of Seller from any of Seller's vendors. This restriction on Buyer is material to Seller's engagement with Buyer and shall continue indefinitely after the termination of this Agreement.

#### **12. INDEMNIFICATION:**

Buyer shall indemnify and hold harmless the Seller, its officers, directors, employees and agents from and against any claim (including costs, litigation expenses, attorney's fees and other expenses) for personal injury to or death of any person or damage to property by whomsoever owned arising out of the sale, installation, use or provision of Products or Services hereunder. Buyer shall indemnify and hold harmless the Seller, its officers, directors, employees and agents from and against any claim (including costs, litigation expenses, attorney's fees and other expenses) for any claims of infringement of any third party's intellectual property rights, to the extent caused by the requirements, designs, or specifications of the Buyer, its agents, or employees arising out of the sale, installation, use or provision of Products or Services hereunder. Insurance recoveries or policies, warranties, or other obligations of Buyer under this Agreement shall not in any way limit this indemnity.

#### **13. LIMITATION OF LIABILITY:**

Buyer acknowledges that the price is predicated on the enforceability of the following limitation of liability, that the price would be substantially higher if Seller could not limit its liability as herein provided, and Buyer accepts this limitation of liability in exchange for such lower price.

SELLER SHALL HAVE NO LIABILITY TO BUYER WITH RESPECT TO THE SALE OF PRODUCTS OR PROVISION OF SERVICES HEREUNDER FOR LOST PROFITS OR FOR SPECIAL,

CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS OR DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE PRICE OF PRODUCTS SOLD AND SERVICES PROVIDED HEREUNDER. SHOULD THE WARRANTY PROVISION OF THIS CONTRACT BE DETERMINED TO FAIL OF ITS ESSENTIAL PURPOSE FOR ANY REASON, THE PARTIES AGREE THAT ALL LIMITATIONS OF LIABILITY FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES WILL REMAIN IN EFFECT.

#### **14. GOVERNING LAW:**

This transaction shall be deemed to have been made and entered into in and shall be construed and enforced in accordance with the laws of Taiwan Republic of China. All terms of trade are governed by INCOTERMS 2010.

#### **15. ARBITRATION:**

Each party irrevocably and unconditionally submits any dispute arising from or in connection with this agreement, including, but not limit to the validity, interpretation and performance to be finally settled by binding arbitration in Taichung, Republic of China before an arbitrator(s) from the Chinese Arbitration Association in accordance with the Rules of the Chinese Arbitration Association, Taipei Arbitration Rules. The arbitration shall be conducted in English. Any award of the arbiter shall (i) be rendered in writing, (ii) state the grounds on which it was based, (iii) decide which Party shall bear the arbitration costs and administrative expenses, or apportion such costs, fees and expenses between the Parties, and (iv) be final and binding on the Parties. Judgment upon any arbitral award rendered under this paragraph may be entered in any court of competent jurisdiction.

#### **16. WAIVER**

Unless otherwise stated in this Agreement, Seller and Buyer acknowledge and agree that the failure of either party to enforce any term of the Agreement shall not constitute a waiver of any rights or deprive either party of the right to insist thereafter upon strict adherence to that or any other term of the Agreement, nor shall a waiver of any breach of the Agreement constitute a waiver of any preceding or succeeding breach. No waiver of any provision of the Agreement, unless expressly stated otherwise in the Agreement, shall be valid and binding unless it is in writing and signed by the party against whom it is sought to be enforced.

#### **17. SEVERABILITY**

The Agreement shall be enforceable to the fullest extent allowed by law. If any provision of the Agreement shall be found to be null, unlawful, void, or inoperative for any reason, such provision shall be struck from the Agreement and otherwise the Agreement shall continue in full force and effect.

#### **18. NO THIRD PARTY BENEFICIARIES**

Nothing in this Agreement, express or implied, is intended to or shall confer any rights, remedies, or benefits upon any person, including without limitation, any affiliate, employees, representatives, contractors, or agents of Buyer, other than the parties hereto and their respective successors or permitted assigns.

#### **19. FORCE MAJEURE**

Seller shall be excused to perform any of its obligations if such delay or failure is caused by circumstances beyond the control of Seller's or Seller's sources of supply, including but not limited to fires, floods, acts of God, acts of terror, acts of war, government restrictions, material shortages, strikes, work stoppages or lock-outs, epidemics, accidents, or transportation delays irrespective of whether such contingency is specified herein or is presently occurring or anticipated.

#### **20. SURVIVAL**

Notwithstanding the expiration, termination, or completion of the Agreement, any duty or obligation which has been incurred and which has not been fully observed, performed, or discharged, and any right, unconditional or conditional, which has been created and has not been fully enjoyed, enforced, or satisfied (including but not limited to the duties, obligations and rights,

with respect to payment, confidentiality, insurance, warranty, and indemnification) shall survive such expiration, termination, or completion until such duty or obligation has been fully observed, performed, or discharged and such right has been enforced, enjoyed, or satisfied.



**Felloe Technology Ltd.**

No. 58, Ln. 961, FuKe Rd., Xitun Dist.

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