



## Terms and conditions of supply of Products and Services

This document sets out the terms and conditions that apply to the supply of Products and Services by Exablaze Pty Ltd ACN 163 908 183 (**Exablaze**) to its customers.

### Agreed terms

#### 1. Supply of Products and Services

- 1.1 You agree these Terms apply to all supply of Products and Services by Exablaze to you.
- 1.2 You will only use Products for their Permitted Use, and in accordance with the Product Documentation.

#### 2. Payment and delivery

- 2.1 Legal and beneficial ownership in a Product will not pass to you until you have paid the full Price. Risk of loss or damage to the Product passes to you upon delivery.
- 2.2 Exablaze is not required to deliver any Product or provide any Service until the Price has been paid.
- 2.3 If Exablaze delivers any Products or Services before you have paid the Price you must pay Exablaze the Price within 30 days of the receipt of any Invoice using the prescribed payment details.
- 2.4 Unless stated otherwise on an invoice, you are liable for and will pay:
  - a. all delivery costs; and
  - b. applicable Taxes, export and import

duties and levies or other associated fees in addition to the Price.

- 2.5 Exablaze may charge interest on any overdue payment at a rate of 2% above Exablaze's primary trading bank's current overdraft rate. Any payment made by you will be credited first against any accrued interest.
- 2.6 A Product or Service will be delivered or supplied in the manner and at the place specified on the Invoice or as otherwise agreed in writing with Exablaze.
- 2.7 Until the Price is paid, you agree not to in any way assign, charge, lease or otherwise deal with the Product in such a manner as to create a security interest over the Product in favour of yourself or any third party.

#### 3. Licence and Support Subscription

- 3.1 Unless otherwise specified, full payment of a Licence and Support Subscription grants you:
  - a. a Software Licence as defined in clause 4;
  - b. a Hardware Warranty as defined in clause 5 (provided the Product has not had gaps in subscription coverage exceeding three (3) months duration); and
  - c. a Support Subscription as defined in clause 6.
- 3.2 Unless otherwise agreed by the parties, you agree that with the purchase of a new Product, a Licence and Support Subscription needs to be fully paid for separately.
- 3.3 The subscription is limited to the items stated in clause 3.1 above and they are offered jointly.

#### 4. Software Licence

- 4.1 Exablaze grants you a non-exclusive, non-transferable licence to use the Software for the purposes of operating a Product for its Permitted Use.
- 4.2 Subject to clause 4.3 below, you will not,

and you must ensure no third parties, copy, reproduce, tamper with, decompile or reverse engineer the Software.

4.3 Where Exablaze supplies, or provides you with access to any Firmware Development Kit the additional terms set out in Exablaze's Firmware Development Kit Licence will also apply. Exablaze's Firmware Development Kit Licence is available on its website, and Exablaze can provide a copy upon request.

4.4 During the Licence and Support Subscription period Exablaze will provide you with access to major upgrades to firmware and software.

## 5. Hardware Warranty

5.1 Exablaze warrants that any Product supplied to you will:

- a. be of a merchantable quality;
- b. be free from material defects affecting the Permitted Use; and
- c. operate in accordance with the Product Documentation, during the Licence and Support Subscription Period, in compliance with Exablaze's obligations to the extent required under the Consumer Law.

5.2 Exablaze warrants to you that any Services supplied under this document will be provided with due care and skill for the duration of the Licence and Subscription Period in full compliance with Exablaze's obligations under the Consumer Law.

5.3 The Hardware Warranty does not apply in the event of any failure or damage resulting from:

- a. any use of a Product other than its Permitted Use;
- b. Force Majeure event or an accident or occurrence that would not fall within the scope of protection afforded by the Consumer Law;
- c. a failure by you to install an update necessary to keep a Product in good working order of which you were or should reasonably have been aware

was required;

d. improper use or maintenance by you or a third party; or

e. any attempt by you to use, modify, disassemble, decompile or reverse engineer a Product or the Software other than in accordance with its Permitted Use.

5.4 You acknowledge that Exablaze makes no warranties in relation to:

a. the performance or capabilities of any Product or Software other than those expressly stated in this document, the Product Documentation and implied under the Consumer Law;

b. the infringement of any third party's Intellectual Property Rights by any Product or Service, or your use of them.

5.5 The Hardware Warranty is given in place of all excludable warranties, conditions, guarantees and obligations to the fullest extent as permitted by law. However, these terms are not intended to limit, restrict, exclude or replace the rights and guarantees under the Consumer Law. To the extent that any provision conflicts with a Consumer Law, that provision will be severed, and the Consumer Law will prevail.

5.6 You acknowledge that no Product or Service is for personal, domestic, or household use for the purposes of the Consumer Law.

5.7 During the the Licence and Support Subscription Period any hardware Products, including any individual components of any hardware Products, which fail will be repaired or replaced by Exablaze if authorisation to return the hardware Product is obtained. To obtain authorisation, you must contact Exablaze support staff, who will explain the return and replacement process to you and advise you as to when you can expect a replacement Product. Replacement Products will be dispatched as soon as possible, upon a reasonable endeavours basis, and subject to the applicable shipping delays.

## 6. Support Subscription

- 6.1 During the Licence and Support Subscription Period Exablaze will provide you with access to:
- a. reasonable technical and Software support;
  - b. patches, bug-fixes, minor upgrades to firmware and software; and
  - c. documentation,
- via the Exablaze Support Portal or a similar support service.
- 6.2 Exablaze staff and engineers will be available via email and telephone on a reasonable endeavours basis.
- 6.3 All information, specifications, advice and/or recommendation provided in relation to any Product or Service offered or supplied by Exablaze are approximations or representations only, and subject to the guarantees under the Consumer Law, provided without any warranty of accuracy, appropriateness or reliability. Exablaze will not be liable or responsible for any loss suffered as a result of your reliance on such information, advice, recommendation, Product or Service.

## 7. Licence and Support Subscription extensions

- 7.1 The parties may agree to extend the duration of the Licence and Support Subscription Period, upon the same Licence and Support Subscription terms, in exchange for an additional per-Product, per-site or organisation-wide, fee.
- 7.2 The Parties may also agree on terms:
- a. enhancing the level of support received during the applicable Licence and Support Subscription Period, whether the Licence and Support Period is for the default duration or has been extended under clause 7.1;
  - b. enhancing the support service levels under Warranty. Primarily this will

relate to the provision of replacement Products or support queries on an urgent basis, whether the duration of the Warranty is the default Licence and Support Subscription Period or has been extended under 7.1; and/or

- c. for Exablaze to provide additional services on a consultancy basis, such as customisation of Products to meet your specific needs.

- 7.3 The fees for any enhanced services or support provided under 7.2 will depend upon the location of the Product and the nature of the enhanced services required. Exablaze will provide an estimate, and the parties may agree a fee. Any fees applicable as a result of receiving any enhanced services or support will be noted in the relevant Invoice.

## 8. Confidential Information

- 8.1 Confidential Information disclosed under this agreement by a party to the other party is only to be used by the Receiving Party for dealings under this agreement in relation to a Product and its Permitted Use.
- 8.2 The parties each reserve all rights in the Confidential Information and no rights or obligations in respect of the Confidential Information other than those expressly contained in this document are granted or are to be implied from this document.
- 8.3 Confidential Information may only be disclosed by the Receiving Party:
- a. to the extent required to perform its obligations or exercise its rights under this document;
  - b. pursuant to a court order or to the extent compelled by law to do so, after having notified the Disclosing Party within a reasonable time to permit the opportunity to seek a protective order, unless such notice is prohibited by the court or by law; or
  - c. as otherwise authorised in writing by the Disclosing Party.

## 9. Intellectual Property

- 9.1 You acknowledge that all Intellectual Property Rights in and associated with the Products and the Software are, and remain, the sole property of Exablaze, even after you have obtained legal and beneficial ownership of a Product.
- 9.2 You indemnify and agree to keep indemnified Exablaze against any and all claims incurred by Exablaze in relation to or in any way directly or indirectly connected with any breach of any Intellectual Property Rights caused by you through modification of or addition to a Product or Service.
- 9.3 You agree that Exablaze will not be liable for any infringements of a third party's Intellectual Property Rights by your possession or use of any Product or Service in Australia or elsewhere, regardless where a Product was supplied.

## 10. Limitation of liability

- 10.1 To the extent permissible under the Consumer Laws, Exablaze limits its liability to payment of an amount equal to the lowest of the cost of:
- replacing the Product;
  - supplying an equivalent Product;
  - repairing the Product; or
  - supplying the Service again.
- 10.2 You agree that where you customise or modify any Product, Exablaze is not liable for any damage, loss, cost, expense or injury related to the Product, or your use thereof.
- 10.3 Where Exablaze becomes liable to you in relation to a Product, Service, its default, or any other liability, you may be entitled to recover damages. Regardless of the basis upon which you are entitled to claim damages, loss, cost expense or injury (including all breach, negligence, misrepresentation, contract, tort or intellectual property claims). Exablaze's entire maximum agreeable liability to you (or any third party making a claim against you) must not exceed any actual damage and loss suffered or incurred up to the

greater of:

- US\$10,000; or
  - the amount you have paid to Exablaze in the preceding 12 months.
- 10.4 In addition to the limitation of 10.2, you agree that Exablaze is not liable for any:
- loss of, or damage to, data;
  - special, indirect, exemplary and/or any economic consequential loss or damages;
  - lost revenue, profits, business, goodwill or anticipated savings.

## 11. Dispute resolution

- 11.1 In the event of a dispute between the parties, any party may give the other party a written notice of the dispute adequately identifying and providing the details of the dispute.
- 11.2 Within ten business days after receiving a notice of dispute (or such longer time as we may agree), representatives of the parties are to confer to resolve the dispute. All aspects of any such conference will be privileged and confidential.
- 11.3 If the negotiations of clause 11.2 do not successfully resolve the dispute, either of us can refer the dispute to mediation within five days of the negotiations ceasing. Any mediation will be attended by both parties in good faith. The mediation will be conducted:
- in Melbourne, Australia;
  - by a mediator agreed on by the parties. If the parties are unable to agree on a mediator within a reasonable period, the then current Chairman of the Resolution Institute (or successor body) or the Chairman's nominee, will nominate a mediator.
- 11.4 A mediator may not make a decision that is binding on a party unless a party has agreed in writing.
- 11.5 Except where a party seeks urgent interlocutory relief a party must not

initiate court proceedings unless clauses 11.1 to 11.3 have been complied with.

- 11.6 Each party must continue to perform its obligations under this document notwithstanding the existence of a dispute.

## 12. Refund and return policy

- 12.1 Unless you entered into an evaluation arrangement with Exablaze, any refund is subject to Exablaze's sole discretion.
- 12.2 Where a Product contains faults, has been incorrectly described or does not perform as required, we will either repair or replace the Product in accordance with clauses 5.7 and if applicable, 7.2b. If we are unable to do so, we will provide a full refund for the relevant Products.

## 13. General

- 13.1 Force Majeure:

A party will not be liable for any delay in or failure to perform its obligations under this document where that the delay or failure is caused by a Force Majeure event.

- 13.2 Obligation to mitigate:

Your are obligated to mitigate any loss or damage which it may suffer in consequence of any breach by Exablaze of the terms of this document.

- 13.3 Legality and severability:

A term or a part of a term of this document that is illegal or unenforceable may be severed from this document and the remaining terms or parts of terms of this document will continue to be in full force and effect.

- 13.4 Currency:

Unless an Invoice specifies otherwise, all amounts are expressed in US\$.

- 13.5 Governing law and jurisdiction:

- a. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- b. This document is governed by the

laws of Australia and each party submits to the non-exclusive jurisdiction of the courts of Australia and any court competent to hear appeals from any of those courts.

- 13.6 Changes to the terms and conditions:

We may change the terms and conditions at any time. We will notify you of any material change prior to the date such change comes into effect.

## Definitions

In this document these terms have the following meanings:

**Confidential Information:** Any information disclosed by either party to the other party that is either by nature confidential, designated by the party disclosing the information (**Disclosing Party**) as confidential or that the party receiving the information (**Receiving Party**) knows or reasonably ought to know is confidential. This includes the know-how, ideas, information, concepts, documents, software, manuals, literature, materials, designs, financial and business information and marketing strategies and any Intellectual Property Rights, that are confidential and proprietary to the Disclosing Party, its employees, contractors or suppliers. This does not include any information that is in the public domain other than through a breach of an obligation of confidentiality.

**Consumer Law:** means any consumer protection laws, applicable to Exablaze's supply of a Product or Service to you, including the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Exablaze Support Portal:** Pages on the Exablaze Website at [www.exablaze.com](http://www.exablaze.com), accessible by authorised customers via a protected log-in.

**Force Majeure:** Any circumstance, matter or thing beyond the reasonable control of a party including acts of God, natural disasters, acts of war, riots and terrorist acts.

**Intellectual Property Rights:** Statutory or other proprietary rights in respect of discoveries, inventions, patents, designs, circuit layouts, copyright, registered and unregistered trade

marks, trade names, domain names, know-how and any right to keep confidential information confidential, and any application or right to apply for registration of any such rights in any and all jurisdictions.

**Invoice:** A tax invoice issued by Exablaze for the supply of any Products, Services.

**Permitted Use:** Proper use of a Product in accordance with, and in an environment specified in, the Product Documentation.

**Price:** Price for the supply of the Products and Services as specified on the Invoice or otherwise agreed in writing.

**Product Documentation:** Any product documentation provided by, or made available by Exablaze to you, which describes the operation, functionality and proper care and maintenance of any Product, including technical specifications and user manuals.

**Product:** Any product of, or supplied by, Exablaze as described on an Invoice.

**Resolution Institute:** is the largest dispute resolution membership organisation in the southern hemisphere.

**Service:** Any service supplied by Exablaze to you, including warranty and support services.

**Software:** Any software or firmware installed or embedded in the Products, or any Source Code or netlist distributed with the Products.

**Licence and Support Subscription Period:** The period specified on an Invoice for the Licence and Standard Support provision or, if no period is specified in the Invoice, then a period of 12 months from the date on which the Product described on the Invoice is delivered to you, or a subscription renewal is fully paid for.

**Hardware Warranty:** The warranties set out in clause 4.

**Source Code:** Any software or logic in human-readable form prior to compilation into object code or VHDL.

**Tax:** If the Product or Service is delivered to you in Australia, all taxes applicable to the supply of that Product or Service (including value added taxes) in Australia or in the place where you are located, and otherwise means any tax on the sale of the Product or Service in the jurisdiction in which the Product or Service is delivered.