



SALES TERMS & CONDITIONS – 1 I 2003

1. DEFINITIONS

- i) *The Seller, ITLITY, We or Us Us or Our or Ours*: either terms refer to I.T. Lity;
- ii) *The Buyer or You or Your or Yours*: either terms refer to the purchaser, as a private or a company whichever applies, of the Luciol Products or Support;
- iii) *The Purchase Order or P.O.*: these terms refer to The Buyer's purchase order and in particular the list of Luciol products and services required by The Buyer to ITLITY;
- iv) *The Luciol Development Pack* stands for the Luciol hardware JTag, cables and associated documentation plus aJile Systems Inc. license;
- v) *The Luciol Products* stands for all Luciol hardware modules and metal cases and plates, plus the documentation and The Luciol Development Pack;
- vi) *Product* stands for The Luciol Products plus any other hardware and/or software product and documentation bought to a third party which would be part of ITLITY's supply to The Buyer
- vii) *The Luciol Support or Support* stand for Advanced and Premium technical support, consulting assistance and development services and their deliverables, all associated to The Luciol Products
- viii) *The Support Products* stands for, without limitation, all designs, discoveries, creations, works, devices, models, Support deliverables, inventions, computer programs, procedures, improvements, developments, drawings, notes, documents, information, and materials made, conceived, or developed by ITLITY alone or with others which result from or relate to The Support performed by them
- ix) *Shipment Date* stands for date of shipment for Products, date of shipment for Luciol Support deliverables and date of commencement for technical support contracts

2. DOCUMENTS TO GOVERN

These terms and conditions govern the sale of all Products and/or Luciol Support by ITLITY and apply notwithstanding any conflicting, contrary or additional terms and conditions in any Purchase Order or other document or communication from The Buyer.

The Seller objects to and shall not be bound to any past or future terms or conditions not set forth herein, including any additional terms shown on The Buyer's P.O. or acknowledgement or shipping documents, which order, acknowledgement or shipping document shall be accepted for billing purposes only, and any inconsistencies therein with the provisions hereof shall be null and void. Shipment pursuant to The Buyer's P.O. containing different or additional terms does not constitute acceptance of such terms and The Seller's shipment pursuant to such order is expressly made conditional on The Buyer's assent to the additional and different terms contained herein.

Any waiver, alteration, modification, or amendment of these terms and conditions shall only be effective as against either party if such waiver, modification, or amendment is contained in a written instrument duly executed by or on behalf of both parties.

The Seller agrees to provide the Products or Support as described in its proposal or quotation.

Prices shall apply for the period specified in the proposal or quotation, or if no period is specified, for thirty (30) days.

All orders are subject to acceptance by The Seller. Upon acceptance, no order may be cancelled or rescheduled without The Seller's consent, which consent may be given by The Seller in its sole discretion. For Luciol Support services, The Seller may condition acceptance upon The Buyer's prior execution of a non-disclosure agreement relating to The Seller's confidential information.

3. PAYMENT

The Buyer shall pay The Seller the price(s) stated in the proposal or quotation.

Packing, shipping and transportation charges, and applicable taxes such as VAT, if any, are additional unless otherwise specified in the proposal or quotation. The Seller's prices set forth on the quote do not include such import duties, fees and charges.

The Buyer shall bear all applicable federal, state, municipal and other government taxes (such as sales, use and similar taxes), as well as import or excise duties, inspection charges, license fees and similar charges, however designated or levied on the sale of the Products (or the delivery thereof) or measured by the purchase price paid for the Products.

The Seller will invoice The Buyer at Shipment Date of Product and/or Support.

Terms of payment are:

- i) for Purchase Order less than 10,000.00 € (euro), payment is at order,
- ii) for other cases payment is net thirty (30) days from date of invoice,

subject to approval of The Buyer's credit.

A service charge of two (2%) per month (24% per annum) or the maximum rate allowed by law, whichever is less, will be made on past due accounts.

If The Buyer fails to pay any invoice when due, or if The Seller believes in good faith that The Buyer's ability to make payments may be impaired, The Seller may suspend delivery of any order or remaining instalment thereof until such payment is made, or may cancel the remaining instalments thereof, and The Buyer shall remain liable to pay for any of The Products or The Support already shipped or delivered. The Buyer agrees to submit such financial information from time to time as may be reasonably requested by The Seller for the establishment and/or continuation of credit terms, when and where applicable.

The Buyer agrees to pay any and all legal fees associated with payment collection.

Except otherwise agreed, all orders are payable in € (EURO). A copy of Your bank transfer or Your wire transfer must accompany Your Purchase Order, when applicable. Letters of Credit. An Irrevocable, Transferable, Confirmed by a European AAA-bank, Straight, Divisible, Payable on Sight, as presented, in EURO, L/C is acceptable by ITLITY for payment from its international buyers.

To date, no payment by credit cards is accepted.

Please contact ITLITY for more information.

4. SHIPMENT AND TITLE

All shipments of The Products and/or The Support by The Seller are EXWORKS Alès (France) and all transportation charges shall be paid by The Buyer in addition to the price of the Products.

Insurance, if desired, shall be responsibility of The Buyer. Handling of the Products and/or The Support to the carrier shall constitute shipment to The Buyer and Title and risk of loss associated to The Products and/or The Support shall pass to The Buyer upon this handling from The Seller's premises.

The Buyer acknowledges that shipment dates provided by The Seller are best estimates only and that The Seller is not liable for failure to deliver on such dates. The Seller reserves the right to make deliveries in instalments. Delivery of a quantity that varies from the quantity specified shall not relieve The Buyer of the obligation to accept delivery and pay for the Products or Support delivered. Delay in delivery of one instalment shall not entitle Buyer to cancel other instalments.

5. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS

Inspection and acceptance of Products and/or Support shall be The Buyer's responsibility. Buyer is deemed to have accepted the Products and/or Support unless written notice of rejection is received by The Seller within ten (10) days after delivery of the Products and/or Support. The Buyer waives any right to revoke acceptance thereafter.

The Buyer shall report in writing to The Seller any discrepancy in shipment quantity or damage within ten (10) days after delivery.

No return of Products or Support shall be accepted by The Seller without a Return Material Authorization ("RMA") Number. Returned Products or Support must be in original manufacturer's shipping pack complete with all packing materials. All Products and Support for return shall be returned freight prepaid in the manner specified in the RMA. The address where to return Products and/or Support will be stated with the notification of the RAM. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products.

Products not eligible for return shall be returned to The Buyer, freight collect.

6. FORCE MAJEURE

In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance with any law, decree, request or order of any governmental agency or authority, either local, state or federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God, accidents of navigation, breakdown or failure of transportation or transportation facilities, failure of or interference with the manufacture, receiving, handling, or consumption of the material covered hereby, inability to obtain raw materials, fuel, power, labour, containers or transportation facilities, or commercial impracticability, or for any other reason (whether or not of the same class or kind as herein set forth) which is not within the control of the party whose performance is interfered with and which by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option suspend deliveries or receipts during the period such cause continues, and no liability shall attach against either party on account thereof.

In the event of a force majeure affecting The Buyer, The Buyer shall apportion its purchases among its written contract suppliers of material, including its own departments and affiliates, on an equitable basis. In the event of a force majeure affecting The Seller, The Seller may apportion its available supply of such material among its purchasers, including its own departments and affiliates, on an equitable basis without incurring liability for failure to perform this Agreement.

The Seller's time for performance of any such obligation shall be extended for the time period of such delay or notwithstanding anything to the contrary herein or in any acknowledgment form, invoice or Purchase Order, The Seller reserves the right to cancel any order or the undelivered portion of any order upon written notice to The Buyer in the event of any unforeseen increase in The Seller's cost of supplies, raw materials, labour or services or other costs.

The provisions of this paragraph shall not be available to any party which fails to use reasonable diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch. The requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes or labour controversies by acceding to the demands of the opposing party or parties.

7. SELLER'S LIMITED WARRANTY FOR PRODUCTS

The Seller warrants to The Buyer that upon shipment to The Buyer, The Products and/or The Support purchased hereunder shall conform to the applicable manufacturer's specifications for such Products and/or Support and that any value-added work performed by The Seller on such Products and/or Support shall conform to applicable Buyer's specifications relating to such work if any. The Seller makes no other warranty, express or implied, with respect to The Products and/or Support.

IN PARTICULAR, THE SELLER MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR RESPECTING INFRINGEMENT.

With respect to Products and/or Support which do not meet applicable manufacturer's specifications and with respect to value-added work by The Seller which does not meet applicable Buyer's specifications, The Seller's liability is limited, at The Seller's election, to:

- i) refund of The Buyer's purchase price for such Products and/or Support (without interest),
- ii) repair of such Products and/or Support, or

- iii) replacement of such Products; provided, however, that such Products and/or Support must be returned to The Seller, along with evidence of purchase, within forty five (45) days from date of shipment, transportation charges prepaid. The Seller shall transfer to Buyer whatever transferable warranties and indemnities The Seller receives from the manufacturer of the Products, including any transferable warranties and indemnities respecting patent infringement.

Except otherwise agreed in a maintenance contract in particular for possible but not limited to patent infringement or engineering advances or product or component commercial availability, The Seller reserves the right, without notice to The Buyer other than this provision, to discontinue products at any time or to make changes in design, specification and manufacturing processes.

8. SELLER'S LIMITED WARRANTY FOR SUPPORT

The Seller warrants to The Buyer that:

- i) The Support will be performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; and
- ii) it will use commercially reasonable efforts to perform the services in a timely fashion responsive to The Buyer's reasonable requests.

The Seller makes no other warranty, express or implied, with respect to The Support.

IN PARTICULAR, THE SELLER MAKES NO WARRANTY RESPECTING THE SUITABILITY OR FITNESS OF SUPPORT FOR ANY PARTICULAR PURPOSE OR USE OR RESPECTING INFRINGEMENT.

In the event of a breach of this warranty, The Buyer's sole and exclusive remedy and The Seller's sole liability shall be to use its commercially reasonable efforts to correct the error or condition causing breach of this warranty, without additional charge to The Buyer.

9. LIMITATION OF LIABILITIES

THE BUYER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND THE SELLER OR ITS SUPPLIERS SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PENAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION COSTS, COST OF CAPITAL, REMOVAL AND/OR REINSTALLATION COSTS, REPROCUREMENT OR SUBSTITUTION COSTS, LOSS OF PROFIT OR REVENUE, LOSS OF USE OF PRODUCTS AND/OR SUPPORT, DAMAGE OF ASSOCIATED EQUIPMENT, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, PERSONAL INJURY, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF THE SELLER OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The Buyer's recovery from The Seller for any claim shall not exceed The Buyer's purchase price for the product or 5000 € (five thousand euros), whichever is less, giving rise to such claim irrespective of the nature of the claim, whether in contract, tort, warranty, or otherwise. The Seller shall not be liable for and The Buyer shall indemnify, defend and hold The Seller harmless from any claims based on The Seller's compliance with Buyer's designs, specifications or instructions, or modification of any products by parties other than The Seller, or use in combination with other products.

The Buyer assumes all responsibility for Product and Support selection. The Buyer affirms that the performance of the Products is affected by many factors unique to their environment, over which The Seller has no insight or control, such as bandwidth, connectivity methods, protocols in use, running applications, and so forth. The Seller is not an insurer; The Buyer remains responsible for obtaining from an insurer any appropriate insurance.

The amount The Buyer pays The Seller is based upon the Products values or for any Support The Seller perform. The limited liability The Seller assumes under these sales terms is unrelated to the value of The Buyer property or property of others located in The Buyer's premises. In the event of loss or injury, The Buyer agrees to look exclusively to its insurer to recover damages.

The Buyer waive all subrogation and other rights of recovery against The Seller that any insurer or other person may have as a result of paying any claim for loss or injury to any other person. The Buyer agrees that The Seller and its agents, employees, subsidiaries, affiliates and parent companies are exempt from liability for any loss, damage, injury or other consequence arising directly or indirectly from The Products The Seller supplies or The Support The Seller performs under this contract.

10. EXPORT CONTROLS

The sale, resale or other disposition of Products and any related technology or documentation are subject to the export control laws, regulations and orders of the United Kingdom and may be subject to the export and/or import control laws and regulations of other countries.

The Buyer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Buyer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

Order acceptance by ITLITY is subject to compliance with export control laws of the United Kingdom.

The Buyer is solely and exclusively responsible for compliance with all the statues and regulations governing purchase and importation of Products and Support acquired from The Seller. If a written contract with The Seller is required as part of Your Purchase Order and importation procedures, please contact The Seller for more information.

11. PATENT AND LICENSE

The Customer agrees and acknowledges that the sales of Products and/or Support under this Agreement is not acquiring any ownership or other interest of any kind whatsoever in any of ITLITY's trademarks, trade names, patents, copyrights, registrations or applications for registration for any of the foregoing, know-how, unpatented inventions, trade secrets, common law rights in any of the foregoing, computer software (including all documentation and source codes) or any other intellectual property of any kind whatsoever or the goodwill associated or which may become associated therewith. In addition, the Customer agrees and acknowledges that ITLITY does not warrant against infringement of any such intellectual property owned by third parties by any of ITLITY's products or components thereof, and ITLITY shall have no liability of any kind whatsoever with respect to any such infringement

The contract of sale formed by these terms and conditions and in particular when The Development Pack is supplied by The Seller to The Buyer in no way provides The Buyer with any license, express or implied, to practice any patented inventions or discoveries owned by The Seller or sold with the Products, except any patented invention or discovery that is embodied by the form and/or composition of the Products and/or Support as sold by The Seller to The Buyer.

The Luciol Development Pack grants solely The Buyer a non-exclusive license to use on one computer the development tools provided by aJile Systems Inc. Complete license terms of aJile Systems Inc. are provided upon request to The Seller.

12. RIGHTS IN SOFTWARE

If an order includes software or other intellectual property, such software or other intellectual property is provided by The Seller to The Buyer subject to the copyright and user license, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement.

13. OWNERSHIP OF PRODUCTS AND SUPPORT PRODUCTS

The Products remain the property of The Seller till complete payment has been made by the Buyer.

Unless otherwise agreed to in writing by The Seller's authorized representative, all proprietary rights, including but not limited to copyright, pertaining to The Support Products shall be owned by The Seller. To the extent qualifying for copyright, The Support Products shall be deemed to have been prepared for The Seller, and shall not be considered a work made for hire. The Buyer agrees, at The Seller's request and at no expense to The Buyer, to take such steps, including but not limited to executing any and all papers and instruments, that The Seller considers reasonably necessary to effectuate the intent and purpose of this paragraph.

14. CONFIDENTIALITY

Nothing stated herein shall be construed to relieve The Buyer from any obligation of confidentiality owed to The Seller or its affiliates with respect to any materials or information furnished to The Buyer subject to such obligation

The Seller does not want to receive confidential information or material from The Buyer. The Buyer agrees that, except agreed in a separate Non-Disclosure Agreement, any information or material sent to The Seller will be deemed NOT to be confidential by The Seller.

The Buyer grants hereby the right to The Seller to use its name as a reference in The Seller's commercial documentation.

15. GOVERNING LAW; REMEDIES; FORUM SELECTION

This Agreement shall be governed by and construed and enforced in accordance with the laws of England, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns hereto worldwide. The Buyer agrees the English court shall have exclusive jurisdiction to adjudicate any dispute arising out of This Agreement or its alleged breach.

If The Buyer fails to make payment when due, The Seller may pursue any legal or equitable remedies, in which event The Seller shall be entitled to reimbursement of its costs of collection, including reasonable attorneys' fees.

16. GENERAL

This Agreement is the complete and exclusive statement of the terms of The Agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to its subject matter.

The Buyer's rights, duties, agreements or obligations hereunder may not be assigned or transferred without the prior written consent of Seller; any attempted or purported assignment shall be void. The obligations of The Buyer shall be binding on its successors and assigns.

The Seller's waiver of any provision of the Agreement, or of any breach or default, shall not be deemed a waiver of any other provision, nor of any other breach or default. Any provision of this Agreement held unenforceable in any jurisdiction shall not affect the remaining provisions of this Agreement in that jurisdiction, nor the validity or enforceability of such provision in any other jurisdiction.

To receive further information, or to send any notice regarding any topic of the hereunder Sales Terms and Conditions, ITLITY may be contacted at: Oulton Rocks, Kibblestone Road, Oulton ST15 8UJ, United Kingdom or by e-mail at admin@itlity.com