

Loadrite (Auckland) Limited Terms & Conditions of Sale

Subject to the terms of any other applicable written agreement You have with Loadrite, Loadrite's sale of Products and provision of Software are governed by these terms and conditions of sale ("**Terms**").

Every order You place with Us is conditioned upon and confirms Your acceptance of these Terms.

1. **DEFINITIONS.**

- 1.1 "**Basic Order Terms**" has the meaning given in Section 2.2.
- 1.2 "**Business Day**" means any day of the week other than a Saturday, Sunday or a statutory public holiday.
- 1.3 "**GST**" means Goods and Services Tax as defined in the New Zealand Goods and Services Tax Act 1985.
- 1.4 "**Loadrite**", "**We**", "**Us**" or "**Our**" means Loadrite (Auckland) Limited (NZCN 101782) and/or its parent companies, divisions, subsidiaries, affiliates, joint ventures and partnerships.
- 1.5 "**Products**" means any hardware products provided under these Terms.
- 1.6 "**Software**" means any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by Loadrite to You. Software includes Product firmware, software locally installed on Your systems and software accessed by You through the Internet or other remote means (such as websites, portals, software-as-a-service ("**SaaS**") and "cloud-based" solutions).
- 1.7 "**Services**" means any services provided by Loadrite as described in one or more Service Agreements.
- 1.8 "**Service Agreements**" are service contracts such as for support & maintenance or professional services, "**Statements of Work**," and any other such mutually agreed upon documents. These Terms do not apply to Service Agreements which have their own terms and conditions.
- 1.9 "**Terms**" means these Terms and Conditions of Sale and incorporates the Basic Order Terms.
- 1.10 "**You**" or "**Your**" means the purchaser of any Products or Software under these Terms.

2. **ORDERS.**

- 2.1 **Quotes, Validity of Orders:** Our quotations are non-binding unless otherwise expressly stipulated in writing. Orders are accepted as valid and binding only when confirmed by Us in writing. Orders cannot be cancelled for any reason without Our prior written consent.
- 2.2 **Basic Order Terms:** All orders must include the following information:
 - (a) the Products and Software ordered and quantities;
 - (b) Loadrite part number(s);

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(c) prices; and

(d) delivery instructions,

(collectively, “**Basic Order Terms**”). All Basic Order Terms are fixed and final only upon Our acceptance of the order in writing.

2.3 **Software Licenses.** All Software is licensed or provided as a service and is not sold. Software licensed or provided subject to any separate agreements provided by Loadrite in connection with the Software, including but not limited to any software licenses, product guides, operating manuals or other documentation (such as an End User License Agreement (“**EULA**”), Terms of Use or Terms of Service) (collectively, “**User Agreements**”). You agree that You will be bound by such User Agreements. If there is a conflict or inconsistency between these Terms and those of a User Agreement, the terms of the User Agreement will prevail. If a User Agreement or other license terms do not accompany Software included with a Product or Service, then Loadrite hereby grants You a personal, non-exclusive, revocable, non-assignable right to access and Use such Software solely as necessary for You to enjoy the benefit of the Product or Service. Nothing in these Terms will be construed to grant any rights or license to Use any Software in any manner or for any purpose not expressly permitted by the applicable User Agreement.

3. **DELIVERY.**

3.1 **Delivery time:** Delivery times are established when Loadrite accepts Your order in writing. We will Use commercially reasonable efforts to meet Your requested delivery dates, unless You are in default under these Terms or Our performance is otherwise excused. We are not liable for late or delayed delivery. Late delivery is not a basis for Your cancellation of any order.

3.2 **Delivery terms:** Title and risk of loss or damage to Products passes to You when We deliver the Products to the shipping carrier (“**Delivery**”). Unless otherwise agreed, We will deliver the Product with freight prepaid, provided that You pay or reimburse Us for all applicable costs of carriage, freight, insurance (if applicable), taxes, duty and other related shipping charges. We have the right to make partial deliveries. Software may be delivered electronically at Loadrite’s option. Title to the Software will remain with Loadrite or its licensors.

4. **ACCEPTANCE, INSPECTION, NOTICE OF NONCONFORMANCE.**

4.1 Your acceptance of ordered Products is deemed to occur upon Our Delivery of the Products to the shipping carrier. Your acceptance of ordered Software is deemed to occur when the Software is activated or otherwise made available for Your access or Use, whichever date is earlier.

4.2 You are responsible for giving prompt written notice of identified damage or nonconformance of Products. You must inspect the condition of the packaging and the Products upon receipt and indicate any evident damage to the carrier on the delivery note, have the carrier’s agent sign the document and, within two (2) days of receipt of the damaged or non-conforming Products, send all documents by e-mail to Our facility from which shipment took place, together with the carrier’s references.

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- 4.3 Concealed Product damage claims must be made by You to the carrier directly and You must also provide Us with written notice and a copy of any such claim within 10 days of receipt of the affected Products. Likewise You must notify Us within 10 days of receipt of incorrect Products. If You retain the Product without giving notice within the designated notice period, You will be deemed to have waived Your right to reject the Product.
- 4.4 If You cancel an accepted Product order within 10 days prior to shipment or reject conforming Products received under an accepted order, We are entitled to claim reasonable compensation for restocking and other expenses actually incurred.
5. **RETURN OF PRODUCT.**
- 5.1 All Product returns are subject to Our prior written consent and must comply with Our Product return (RMA) procedures then in effect. Before returning or exchanging a Product, You must contact Us directly to obtain an authorization number to include with Your return. You must return Products to Us in their original or equivalent packaging, and You are responsible for risk of loss, as well as shipping fees back to Loadrite. Products received but not eligible for return will be sent back to You freight collect. For approved returns You will receive credit equal to the lesser of the product's invoice price or its current replacement value, less any applicable charges or fees.
6. **PRICING, TERMS OF PAYMENT, TAXES.**
- 6.1 Unless We state otherwise in writing, payment is due 30 days from Our invoice date. You will make payment in the currency stated on the invoice. We are entitled to offset payments against prior debt balances in Your account.
- 6.2 We have the continuing right to review Your credit and change Your payment terms, and may at any time demand advance payment, satisfactory security (such as, but not limited to, a confirmed, irrevocable letter of credit acceptable to Us), or a guarantee of prompt payment prior to shipment or service activation.
- 6.3 We reserve the right to charge interest on all overdue sums owing to Us under these Terms at the rate of 1.5% per month (or the highest legal limit if lower than said amount), measured from the date the sums in question became payable to the date on which We receive full payment.
- 6.4 You grant Us a purchase money security interest in each Product delivered to You until payment is made in full to Us for such Products. Upon request, You will cooperate with Us in perfecting any such security interest. You will provide Loadrite all information required in order to allow it to register a financing statement pursuant to the New Zealand Personal Property Securities Act 1999 (**PPSA**) or otherwise register and/or perfect Our security interest in the relevant jurisdiction.
- 6.5 You waive any rights to receive a copy of a verification statement or financing charge statement relating to the security interest under these Terms.
- 6.6 You agree that sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129 131, 132, 133 and 134 of the PPSA, and any equivalents in any applicable laws to the extent possible under those laws, shall not apply to these Terms and waives any rights you have under those sections.

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- 6.7 You are liable for any costs incurred by Us if You change or cancel any order, and for all costs of collection of past due amounts (including attorneys' fees).
- 6.8 Our stated prices for Products and Software do not include applicable sales taxes, Value Added Tax, GST, export or import charges, transportation or insurance charges, customs and duty fees, personal property taxes or similar charges, all of which are Your responsibility to pay. Unless You provide Us with direct payment authority or an exemption certificate valid in the jurisdiction to which the Product will be delivered, You will pay Us all taxes and governmental fees We are required to collect or pay upon sale or delivery of the Product.

7. LIMITED WARRANTY.

7.1 Products and Software: Unless:

- (a) the limited warranty included with a Product; or
- (b) the User Agreement accompanying any Software grants You different rights or disclaims all warranties,

We warrant to You, and only to You, as applicable:

- (c) that Our Products are designed and manufactured to conform to Our specifications and will be free from defects in material and workmanship for a period of 12 months from date of Delivery, and;
- (d) that Our Software will substantially conform to the functional specifications and current documentation provided by Loadrite for a period of 90 days. During the warranty period, Our liability and Your exclusive remedy is limited, at Loadrite's option, to replacing, repairing, correcting, or issuing credit for any Product or Software subject to the warranty in this Section 7.1, which upon inspection We determine is non-conforming.

7.2 Warranty Exclusions: The foregoing limited warranty only applies if and to the extent that:

- (a) the Product or Software is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with Our applicable documentation and specifications; and
- (b) the Product or Software is not modified or misused.

This limited warranty does not apply to, and We are not responsible for defects or performance problems resulting from:

- (c) the combination or Use of the Product or Software with hardware or software products, information, data, systems, interfaces or devices not made, supplied or specified by Us;
- (d) operating the Product or Software under any specification other than, or in addition to, Our standard specifications for them;

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- (e) the unauthorised installation, modification, repair or Use of the Product or Software;
- (f) damage caused by accident, lightning or other electrical discharge, fresh or salt water immersion or spray (outside Product specifications); or exposure to environmental conditions for which the Product or Software is not intended;
- (g) normal Wear and tear on consumable parts (e.g., batteries); or
- (h) cosmetic damage.

We do not warrant or guarantee the results obtained through the Use of the Product or Software.

We make no warranties under these Terms with respect to Services, which if provided under these Terms are provided “as-is”.

7.3 Notice regarding Products equipped with satellite or wireless technology: Your use of certain products and software is dependent on the availability and coverage of wireless networks, telecommunications networks, satellite positioning systems and the internet, which involve facilities owned and operated by third parties. We are not responsible for the operation, availability or failure of such third party systems or facilities.

7.4 Warranty disclaimer: To the extent permissible by law, the limited warranty terms in this Section 7 are in lieu of all obligations or liabilities on Our part arising out of, or in connection with, Our products and software and state Our entire liability and Your exclusive remedies relating to them. Except as otherwise expressly provided in these terms, the Products and Software and any accompanying documentation are provided “as-is” and without express or implied warranty or condition of any kind, either by Us or anyone who has been involved in its creation, production, installation, or distribution, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose, satisfactory quality, title, and noninfringement. Additionally, We make no express or implied warranty that Software provided to You in connection with these terms, is or will be secure, accurate, complete, uninterrupted, free of errors, or free of viruses, or other malware or program limitations. Some jurisdictions do not allow limitations on duration or the exclusion of an implied warranty, so the above limitation may not apply or fully apply to You. If you are a reseller of the Products or Software You will not make or pass on to Your own customers any warranty, condition or representation on behalf of Us other than, or inconsistent with, the applicable limited warranty in the Products and Software provided to You under these Terms.

7.5 CGA and FTA: You acknowledge that the Products and Software are being purchased for business purposes and that the New Zealand Consumer Guarantees Act 1993 (**CGA**) does not apply. The parties agree that the Products and Software are supplied and acquired in trade within the meaning of the New Zealand Fair Trading Act 1986 (**FTA**), that sections 9, 12A and 13 of the FTA will not apply to the agreement between the parties, and that it is fair and reasonable to exclude their application You acknowledge, and the parties agree, that the Services and Deliverables are purchased for business purposes and supplied and acquired in trade for the purposes of any other applicable laws in each applicable jurisdiction, and any legislation equivalent to the CGA and

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sections 9, 12A and 13 of the FTA do not apply to the agreement between the parties to the extent permissible under that legislation.

- 7.6 **Distributor Warranties:** The above limited warranty provisions will not apply to products You purchase in those jurisdictions in which product warranties are the responsibility of the local distributor from whom the products are acquired. In such case, please contact Your Loadrite product dealer for applicable warranty information.

8. **WARRANTY PROCEDURES.**

- 8.1 **Warranty Repair Procedure:** If any Product fails during the warranty period for reasons covered by Our limited warranty and You notify Us of such failure during the warranty period, We will at Our option:

- (a) repair or replace a nonconforming Product with new, equivalent to new, or reconditioned parts or Product; or
- (b) if repair or replacement is commercially impractical in Loadrite's determination, refund the Product purchase price You paid (excluding separate costs of installation, if any) upon Your return of the Product in accordance with Our product return procedures as referenced in Section 5 above.

Any repaired or replaced Product will be warranted for a period of 30 days or the remainder of the original warranty period, whichever is longer. We may, in Our sole discretion, arrange for fulfilment of Our warranty obligations through a Loadrite affiliate, authorised distributor or an authorised warranty service centre.

- 8.2 **Determination of Warranty Applicability:** We reserve the right to refuse warranty services if the Product or Software date of purchase cannot be proven, if a claim is made outside the warranty period or if a claim is excluded under Section 7.2 above. Following Our examination of Your claim, We will notify You of warranty status and the repair cost of any out-of-warranty Product. At such time You must issue a valid purchase order to cover cost of the non-warranted Product repair and return freight, or authorise return shipment of the Product at Your expense as-is.

- 8.3 **Not Responsible for Lost Data.** We are not responsible for any modification or damage to, or loss of any programs, data, or other information stored on any media or any part of any Product serviced by Us, or stored or hosted by Us in connection with a Software service We provide, or for the consequence of such damage or loss, (such as business loss in the event of system, program or data failure.) You are solely responsible for backing up data and removing all features, parts, alterations, and attachments not covered by warranty prior to releasing the Product to Loadrite for service or seeking Software support. Any Product or Software sent to Loadrite for support may be returned to You configured as originally provided to You by Loadrite.

9. **LIMITATION OF LIABILITY.**

- 9.1 Our entire liability for any and all claims arising out of or in connection with these terms is limited to the amounts You actually paid to Us under the terms.

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- 9.2 Neither We nor Our suppliers are liable for any incidental, consequential, punitive damages or other damages, or loss of profits, loss of revenue, loss of data, loss of use of the products or software or any associated equipment, costs of cover, downtime and user time or for breach of any express or implied warranty or conditions, breach of contract, negligence, strict liability or any other legal theory related to the products or software.
- 9.3 Except to the extent prohibited by applicable law, any implied warranty of satisfactory quality or fitness for a particular purpose applying to the products or software is limited in duration to the duration of the warranty specified in section 7, above.
- 9.4 The parties agree that the limitations of liability in this Section 9 are agreed allocations of risk constituting in part the consideration for Loadrite's sale of Products to you, and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy.

10. INTELLECTUAL PROPERTY OWNERSHIP.

- 10.1 You agree that Loadrite owns all right, title and interest to all intellectual property and other proprietary rights to documents and materials, calculations, drawings, models, plans, sets of tools, technology, software, designs, engineering details, schematics and similar data relating to or incorporated in the Products and Software and any accompanying documentation or information derived from the foregoing.
- 10.2 You will take all reasonable precautions to prevent unauthorised access and Use of the Software and documentation by third parties.
- 10.3 To the extent permitted by relevant law, You will not, nor allow any third party to copy, decompile, disassemble or otherwise reverse engineer the Products or Software, or attempt to do so.
- 10.4 You are prohibited from, and will prevent any third party from, removing, covering or altering any of Our patent, copyright or trademark notices placed upon, embedded in or displayed by the Products or Software or their packaging and related materials.
- 10.5 We reserve all rights in the Products and Software not specifically granted to You under these Terms.

11. EXPORT CONTROL.

- 11.1 You may not use or otherwise export or re-export the Products or Software except as authorised by the laws of the jurisdiction in which they were obtained. In particular, but without limitation, the Products and Software may not be exported or re-exported in violation of export laws, including if applicable export or re-export into any New Zealand or US-embargoed countries or to anyone on the US Treasury Department's list of Specially Designated Nationals or the US Department of Commerce Denied Person's List or Entity List.
- 11.2 You represent that You are not located in any country or on any list where the provision of Products or Software to You would violate applicable law. You also agree not to Use or enable Use of the Products or Software for any purposes prohibited by applicable law or export or re-export any Product or Software with knowledge that it will be Used in the design, development,

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production or Use of chemical, biological, nuclear or ballistic Weapons. Laws and regulations change frequently. It is Your responsibility to know the law pertaining to export/import procedures in the country of destination of the Product and Software.

11.3 You will defend, indemnify and hold Us harmless against any liability (including attorneys' fees) arising out of Your failure to comply with the terms of this Section 11.

12. DEFAULT.

12.1 We reserve the right by written notice of default to cancel or indefinitely suspend any accepted order and to refuse additional orders if:

- (a) You default in performing Your obligations under these Terms,
- (b) You cease business operations;
- (c) You have a receiver, liquidator, administrator, manager or mortgagee take possession of or be appointed with respect to all or any part of Your business assets or undertaking;
- (d) You make an assignment for the benefit of Your creditors, or enter into any general arrangements or composition with or for the benefit of Your creditors; or
- (e) when obtaining third-party financing in connection with Your Product purchase(s) You fail to do so in a timely manner on terms satisfactory to Us.

13. DISPUTE RESOLUTION.

13.1 If a party believes that there is a dispute in relation to these Terms, it will first notify the other party in writing giving details of the dispute. The dispute will then be promptly referred to a senior representative of each party for resolution (who may use mediation to assist). Pending resolution of the dispute, both parties will continue to perform all their respective obligations under these Terms. If the dispute remains unresolved 20 Working Days after the meeting of senior representatives referred to above, then the dispute will be referred to the arbitration of a single arbitrator to be appointed by the parties or failing agreement to be appointed by the President of the New Zealand Law Society. Such arbitration will be carried out in New Zealand and in accordance with the provisions of the New Zealand Arbitration Act 1996.

13.2 Nothing in these Terms prevents either party from taking urgent interlocutory, injunctive or declaratory relief in respect of the dispute.

13.3 No dispute or legal action arising under these Terms, may be brought by either party more than one (1) year after such cause of action accrued, except that an action for non-payment may be brought within two (2) years of the date of the last payment.

14. GENERAL.

14.1 **Governing law and jurisdiction:** Unless expressly otherwise set forth in an SOW, New Zealand law governs these Terms and all SOWs, and You submit to the jurisdiction of the New Zealand courts

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(subject to Section 13). The United Nations Convention on Contracts for the International Sale of Goods is excluded.

- 14.2 **Entire Agreement:** Both parties agree that these Terms, are the complete and exclusive statement of the mutual understanding of the parties, and supersede and cancel all previous written and oral agreements and communications relating to the subject matter of these Terms. No provision of any quotation or other business form employed by You will supersede these Terms, and any such document relating to these Terms will be for administrative purposes only and will have no legal effect.
- 14.3 **Modifications:** No change to these Terms or an order will be effective unless in writing and signed by both parties.
- 14.4 **Severability:** If any provision or part of a provision of these Terms is held invalid, unenforceable or illegal for any reason, these Terms and any remainder of the provisions will remain otherwise in full force apart from that part of the provisions which will be deemed deleted.
- 14.5 **Force Majeure:** Except for payment obligations, neither party will be liable to the other for failure to perform its obligations to the extent caused by an event beyond the reasonable control of such party, including, without limitation, government regulations or orders, outbreak of a state of emergency, acts of god, acts of terrorism, blockade, war, warlike hostilities, civil commotion, riots, epidemics or pandemics, fire, natural disasters, strikes, lockouts, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency, or any other similar cause or causes, provided that, to the extent feasible, the affected party promptly notifies the other of such occurrence and makes its commercially reasonable efforts to eliminate the effect thereof.
- 14.6 **Waiver:** No failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.
- 14.7 **Notices:** Any notice, report, approval or consent which may be or is required to be given under these Terms will be in writing to the address(es) specified by each party. A communication under these Terms will only be effective:
- (a) in the case of personal delivery, when delivered; and
 - (b) if made by email, on the Business Day on which it is delivered, provided the sender does not receive an automated "out of office" or notification of non-delivery indicating the message has not been received;
- provided that any communication received or deemed received after 5 pm or on a day which is not a Business Day will be deemed not to have been received until the next Business Day.
- 14.8 **Waste Electrical & Electronic Equipment (WEEE):** If the Products are furnished to You as component products on an OEM basis, or for import, resale or distribution to third parties, then You agree that You qualify as, and are deemed the "producer" of all such Products under any laws, regulations or other statutory scheme providing for the marking, collection, recycling, take-back, and/or disposal of electrical and electronic equipment ("**WEEE Regulations**") in any jurisdiction

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whatsoever, and are solely responsible for complying with all such applicable WEEE Regulations in connection with those Products and for all associated costs.

- 14.9 **Official Language:** The official language of these Terms is English. If there is a conflict between versions of these Terms in any other language, the English language version controls.