

RENESAS TERMS AND CONDITIONS FOR PRODUCT SUPPORT

The following terms and conditions will apply to all hardware and software product support services provided by Renesas Electronics Europe Limited – Engineering Division, (Renesas).

1. Support Services

1.1 Renesas shall provide to the Customer the following product support services (the “Support Services”) for the Renesas hardware and/or software product(s) specified in the Customer’s product support registration (the “Products”) upon the terms and conditions set out below:

1.1.1 Advice

Renesas shall provide the Customer, between the hours of 0900 to 1700 GMT, Monday to Friday (excluding public holidays in England and Wales), with such technical advice by email, telephone **[or facsimile transmission]** as shall be reasonably necessary to resolve the Customer’s difficulties and queries in using the Products. For the avoidance of doubt, Renesas shall not be obliged to provide such technical advice in respect of any difficulties or queries which arise by reason of any of the matters described in clause 2.

1.1.2 Software Product updates

Renesas will provide, in respect of software Products, such software update services as are specified on RENESAS’s website as being applicable to the level of support registered for by the Customer. The details of such update services are set out on RENESAS’s website. These terms and conditions shall apply to any Support Services provided by RENESAS to the Customer in respect of software updates.

1.1.3 Error correction

Renesas will provide, in respect of software Products, such error correction services as are specified on RENESAS’s website as being applicable to the level of support registered for by the Customer. The details of such error correction services are set out on RENESAS’s website.

2. Exceptions

2.1 The Support Services exclude the maintenance of any hardware Product which is necessitated as a result of any cause other than fair wear and tear or Renesas’s fault, including without limitation:

2.1.1 failure or fluctuation of electric power, or other environmental conditions;

2.1.2 operator error, or use of the hardware other than in accordance with the applicable instructions;

2.1.3 accident, transportation, neglect, misuse, or default of the Customer, its employees or agents or any third party;

2.1.4 any fault in any attachments or associated equipment (whether or not supplied by Renesas) which do not form part of the hardware; or

2.1.5 any attempt by any person other than Renesas (or Renesas’s authorised maintenance providers) to adjust, modify, enhance, repair or maintain the hardware.

- 2.2 Hardware Product Support Services also exclude:
- 2.2.1 electrical or other environmental work external to the Product;
 - 2.2.2 maintenance of any attachments or associated equipment not supplied by Renesas which do not form part of the Product; or
 - 2.2.3 recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of, or fault in, the Product.
- 2.3 In the case of software Products Renesas shall have no obligation to provide any Support Services in respect of:
- 2.3.1 defects or errors resulting from any modifications of the software made by anyone other than Renesas (or Renesas's authorised maintenance providers) without Renesas's prior written consent;
 - 2.3.2 any versions of the software notified by Renesas as being unsupported;
 - 2.3.3 operator error, or use of the software other than in accordance with the applicable program documentation;
 - 2.3.4 any defect or error in the equipment upon which the software is used, or in any program used in conjunction with the software;
 - 2.3.5 defects or errors caused by the use of the software on or with equipment or programs not supplied by or approved in writing by Renesas; or
 - 2.3.6 any modification or enhancement of the software if such modification or enhancement results in a departure from the software's specification.
- 2.4 Renesas shall make an additional charge in accordance with its standard scale of charges from time to time in force for any Support Services provided by Renesas:
- 2.4.1 at the request of the Customer but which do not qualify for Support Services by virtue of any of the exclusions referred to in clauses 2.1, 2.2 or 2.3 above; or
 - 2.4.2 at the request of the Customer but which Renesas finds are not necessary.

3. Payment

Renesas shall only provide Support Services which have been paid for in advance by the Customer at Renesas's current rates.

4. Duration

- 4.1 Renesas shall provide the advice Support Services (as defined in clause 1.1.1 above) in respect of each specific Product for so long as it considers that such service is reasonably required for that Product.
- 4.2 Renesas shall, subject to earlier termination as provided below, provide the other Support Services:
- 4.2.1 in the case of Support Services relating to new Products, from the purchase date of the new Product and for the period specified in the relevant customer information sheet for the relevant Product; or

- 4.2.2 in the case of extended Support Services purchased by the Customer (either at the time of purchase of a Product or subsequently), from the date of expiry of the earlier Support Services and for the period specified in the Customer's registration for the Support Services.
- 4.3 Upon expiry of the applicable support period as defined in clause 4.2 (or any extension of the support period) the Customer may have the option of extending the support period by a 12 month period upon payment of Renesas's then current charges for such additional support. Any such extension must take place within 3 months of the expiry of the original support period.

5. Customer's Obligations

- 5.1 During the continuance of the Support Services the Customer shall:
 - 5.1.1 ensure that hardware and software Products are used only in accordance with the applicable instructions or documentation by competent trained employees only, or by persons under their supervision;
 - 5.1.2 not request, permit or authorise anyone other than Renesas (or Renesas's authorised maintenance providers) to provide any maintenance services in respect of hardware or software Products;
 - 5.1.3 co-operate fully with Renesas's personnel in the diagnosis of any error or defect in the Products;
 - 5.1.4 make a back-up copy of software Products and such back-up copies of the Customer's databases and computer records as may be necessary to accord with best computing practice;
 - 5.1.5 not alter or modify software Products or program documentation in any way whatsoever, nor permit such software to be combined with any other programs to form a combined work;
 - 5.1.6 make available to Renesas free of charge all information facilities and services reasonably required by Renesas to enable Renesas to perform the Support Services including, without limitation, computer runs, on-line access, memory dumps, printouts, etc; and
 - 5.1.7 provide such telecommunication facilities as are reasonably required by Renesas for testing and diagnostic purposes at the Customer's expense.

6. Proprietary Rights

- 6.1 All intellectual property rights of whatever nature in hardware Products are and shall remain the property of Renesas.
- 6.2 Software Products (including all corrected versions and releases), any program documentation, and the copyright and other intellectual property rights of whatever nature therein, are and shall remain the property of Renesas.
- 6.3 The Customer's use of software Products, any releases, and the program documentation shall be governed by the applicable licence arrangements in place between the Customer and Renesas.

7. Confidentiality

- 7.1 “Confidential Information” means all information obtained by one party from the other in the course of Renesas’s provision of the Support Services which is expressly marked as confidential, or which is manifestly of a confidential nature, or which is confirmed in writing as being confidential within 7 days of its disclosure.
- 7.2 Each party shall treat as confidential all Confidential Information and shall not divulge Confidential Information to any person (except to such party’s own employees and then only to those employees who need to know the same) without the other party’s prior written consent, provided that this clause shall not extend to information which was:
- 7.2.1 publicly available prior to the date of the Customer’s registration for the Support Services or is made publicly available by the disclosing party without restriction;
 - 7.2.2 rightfully received by the receiving party from third parties without accompanying secrecy obligations;
 - 7.2.3 already in the receiving party’s possession and was lawfully received from sources other than the disclosing party;
 - 7.2.4 independently developed by the receiving party; or
 - 7.2.5 approved in writing by the disclosing party for release.
- 7.3 If Renesas is the receiving party, it may disclose confidential or proprietary information which the Customer discloses to it to employees of its parent company and to employees of subsidiaries of its parent company. Such disclosures will be subject to the same terms and conditions as are set out in this clause.
- 7.4 The foregoing obligations as to confidentiality shall survive any termination of the Support Services.

8. Termination

- 8.1 Notwithstanding anything else contained herein Renesas may terminate the Support Services immediately by written notice to the Customer if the Customer:
- 8.1.1 is in breach of any of these terms and conditions and (in the case of a breach capable of being remedied) shall have failed to have remedied the breach within 14 days of a written notice requiring it to do so; or
 - 8.1.2 has a receiver or administrative receiver appointed or passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the Customer becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business.
- 8.2 Any termination of the Support Services (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the continuance in force of any provision hereof which is expressly or by implication intended to continue in force on or after such termination.
- 8.3 Any termination of the Support Services shall not of itself affect the Customer’s right to continue to use hardware or software Products (although the Customer’s use of software Products will continue to be governed by the provisions of the relevant licence agreement).

9. Assignment

- 9.1 The Customer may not assign its rights and obligations hereunder without the prior written consent of Renesas. The Customer and Renesas acknowledge that certain of the business of Renesas Electronics Europe Limited may be transferred to another company, and that upon such transfer becoming effective the benefit and burden of this agreement shall automatically be assigned to such company without further action by either party.

10. Force Majeure

- 10.1 Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled to a reasonable extension of time for the performance of such obligations.

11. Liability

- 11.1 Renesas shall not be liable for any loss or damage sustained or incurred by the Customer or any third party (including without limitation any loss of use of software Products or loss of or spoiling of the Customer's data) resulting from any defect or error in a software Product or the program documentation.
- 11.2 Renesas shall not be liable to the Customer for any loss arising out of any failure by the Customer to keep full and up-to-date security copies of the computer programs and data it uses in accordance with best computing practice.
- 11.3 Without prejudice to clauses 11.1 and 11.2, and notwithstanding anything else contained herein, neither party shall be liable to the other for any indirect or consequential loss (including, without limitation, loss of profits, loss of revenue, failure to realise expected savings and/or loss of goodwill), or for any special, indirect, exemplary, incidental, consequential or punitive damages howsoever arising.
- 11.4 Save in respect of death or personal injury caused by Renesas's negligence (in which case Renesas's liability shall be without limit), Renesas's liability in respect of the Support Services, whether arising from negligence, breach of contract, indemnity or otherwise, shall be limited to twice the amount paid by the Customer for the Support Services for the support period during which such liability arises.

12. Waiver of Remedies

- 12.1 No delay by either party in enforcing these terms and conditions shall prejudice or restrict the rights of that party, nor shall any waiver of its rights prevent the subsequent enforcement of that term and shall not operate as a waiver of any subsequent breach.

13. Entire Agreement and Amendment

- 13.1 These terms and conditions constitute the entire understanding and agreement between the parties in relation to their subject matter and no representations, warranties or undertakings, express or implied, statutory or otherwise, made by or on behalf of either of the parties hereto and which are not contained in this agreement shall give rise to any liability on the part of the maker thereof.
- 13.2 No amendment, waiver or variation of these terms and conditions shall be binding on the parties unless set out in writing, expressed to amend these terms and conditions and signed by a duly authorized representative of each party.

14. Notices

- 14.1 Any notice required to be given by either party shall be given in writing and shall be addressed to the Customer at the contact address notified in the Customer's registration and to Renesas at Whitebrook Park, Lower Cookham Road, Maidenhead, Berkshire SL6 8YA, England, for the attention of Renesas Electronics Engineering Division Product Support Manager.
- 14.2 Notices shall be deemed to have been given:
- 14.2.1 if delivered personally, at the time of delivery (provided that the person delivering the notice obtains the signature of a representative of the other party);
 - 14.2.2 if sent by first-class post, two business days after posting (and in proving such service it shall be sufficient to prove that the letter was properly addressed, stamped and put in the post); and
 - 14.2.3 if sent by fax, at the time of transmission, provided that the sender obtains a transmission confirmation report and sends the original notice by first-class post within 12 hours of transmission.

15. Export Control

- 15.1 In the event that the Customer intends to export or re-export the Products, or make them available to a third party in another country it agrees to comply with all relevant export control laws and relevant national regulations.
- 15.2 The Customer further agrees to conform to the strict observance of all United Nations sanctions and shall not export, re-export or make available the Products whether wholly or partly, or either directly or knowingly on an indirect basis, to any destinations, or any person or organisation subject to such sanctions, or for the purpose prohibited by such sanctions.
- 15.3 The Customer also agrees to comply with all applicable national and international export control regulations and the Customer further warrants and undertakes that the Products supplied to it shall not, in its entirety or in part, be used in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or the development, production, maintenance or storage of missiles capable of delivering such weapons, as covered by the relevant non-proliferation arrangements. In particular, the Customer agrees to comply with the US Export Administration regulations relating to export and re-export.

16. Law

- 16.1 These terms and conditions shall be construed and governed in accordance with the laws of England and Wales and the parties hereby agree to submit to the non-exclusive jurisdiction of the English courts.

17. Severability

- 17.1 In the event that any or part of any term, condition or provision contained in these terms and conditions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

18. Third Parties

- 18.1 Nothing in these terms and conditions is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise) or any right to enforce any term contained herein.