

Libelium's Standard Terms and Conditions of Sale and Use



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Thank you for using our products. By buying this product (the **"Product(s)"**), you (**"You"**) accept and agree to be bound by these standard terms and conditions of sale and use (the **"T&C"**). It is important for You to read each section of this document, as it is legally binding between You and Libelium Comunicaciones Distribuidas, S.L., a company legally incorporated and existing according to the Laws of Spain, company registered in the Mercantile Register of Zaragoza volume 3473, book 0, page 50, sheet Z-42864, with Tax (VAT) number ES-B99135832 and registered address at C/ Escatrón 16 (Edificio LIBELIUM), 50014 Zaragoza, Spain (**"LIBELIUM"**), regarding your use of the Product. Please, read this whole document before buying and/or using your Product.

1. Definitions

- a) "Customer" shall mean an individual or entity validly purchasing and/or obtaining a license on the Product.
- b) "OEM Customer" shall mean a company or entity that purchases the Product with the purpose of embedding the Product(s) into other product(s) or reselling the Product(s) under a different name and label.
- c) "End User" shall mean a Customer who acquires Product for its own use and does not resell the Product.
- d) "Product" or "Product(s)" shall mean the hardware devices, software programs and upgrades, solutions and services developed, manufactured and marketed by LIBELIUM.
- e) "Intellectual Property Rights" shall include but not to be limited to proprietary rights, know-how, software, trademarks, slogans, translations, utility models, trade names, domain-names, designs and models and any applications thereof as well as copyrights and related rights, trade secrets and confidential information, concerning the Product(s) and the Documents.
- f) "Documents" shall include but not being limited to the information contained in LIBELIUM's Websites and User's Handbooks.

2. Acceptance

These T&C terms shall apply to all offers and sales made by LIBELIUM. Specific terms and conditions agreed upon for a particular order shall not bind LIBELIUM for future orders. A purchase order submitted to LIBELIUM or the reception of Product(s) supplied by the latter implies express acceptance of these T&C upon which only specific selling terms agreed upon by LIBELIUM and Customer on a case by case basis, will prevail.

3. Offers

Unless expressly stated otherwise in a specific offer, LIBELIUM's offers shall be valid for a thirty (30) calendar day term as from the day in which they were communicated to Customer, after which they will not bind LIBELIUM.

4. Discontinuance of supply

LIBELIUM shall be entitled at any time to discontinue the production, sale or distribution of any of its Product(s), to change the design, structure, or functionality of any of its Product(s) and any part thereof, to amend the Product(s) and to change its service, warranty or other policies. LIBELIUM engages to support discontinued Product(s) with parts availability and bug fixes as long as such stocks are not sold out.

5. Prices

Unless otherwise established in writing, prices set forth in LIBELIUM's price lists and offers shall be deemed as expressed in Euro currency and shall be considered EX-WORKS Zaragoza, Spain (Incoterms® 2010), exclusive of VAT or any other applicable tax or duty.

LIBELIUM shall be entitled to modify its price list at any time without prior notice and therefore, Customer undertakes to ask for an offer for every order.

A price list disclosed by LIBELIUM supersedes and makes unenforceable any preceding one as from the date of its coming into force. The valid price list shall be the one in force at the time of placing an order.

Unless a different provision is included in LIBELIUM's offer, prices do not include:

- a. The cost of obtaining any technical certificate required by any authority to distribute the Products in the country of destination, nor any document requested for customs clearance;
- b. Any extra costs arising out of, but not limited to delay during customs clearance in the importing country, whether or not customs clearance is LIBELIUM's duty.

6. Payment

Unless otherwise expressly agreed upon in writing, payment terms shall be a down payment for the full amount of the order. Should any credit be granted to Customer, any payment delay will increase the debt with the delay interest foreseen under Spanish Act 3/2004 of 29th December, at the then current interest rate.

Any costs and expenses borne by LIBELIUM to collect payments due and accrued shall be reimbursed by Customer.

7. Retention of title

LIBELIUM shall retain title of Product(s) until complete payment of price has been accomplished by Customer and shall therefore be entitled to exercise any action to protect its rights, even if Product(s) have been processed by OEM Customers or are in the possession of any third party.

8. Orders

Except for online orders, all orders shall be forwarded to LIBELIUM in writing, either by fax or email. LIBELIUM shall issue a pro forma invoice which shall be signed and stamped in acceptance by the Customer and submitted to LIBELIUM.

LIBELIUM may reject or cancel any pending order, whenever there are pending payments from OEM Customer.

Orders cannot be cancelled after shipment of Product(s). Neither can they be cancelled in case of non-stock Product(s), nor after the start of the raw materials supply or the manufacturing processes.

9. Delivery

Unless expressly agreed otherwise, delivery terms shall be ExWorks Zaragoza, Spain (Incoterms® 2010). Should Customer be interested in any other delivery term, it shall inform LIBELIUM thereof at the time of placing its order, in order for LIBELIUM to submit a new quotation to Customer.

The Incoterms rule expressed in LIBELIUM's offer shall not be waived by the fact that Products are sent to Customer or OEM Customer with shipping costs prepaid by LIBELIUM at Customer's prior request. LIBELIUM's invoice shall break down any shipping or extra costs prepaid, taking into account that LIBELIUM shall not assume any liability concerning customs clearance requirements in the country of destination.

Delivery time shall be the one disclosed in LIBELIUM's offer and shall start the day after full payment is made by Customer or, should any credit be granted by LIBELIUM, the day after a downpayment is made by Customer in the amount agreed upon with LIBELIUM.

Under no circumstance shall LIBELIUM be considered responsible for any delay in delivery due to the carrier's or third parties' failure.

LIBELIUM shall inform Customer as soon as possible about any circumstance beyond its responsibility and preventing the agreed delivery time from being met, stating the reasons of the delay, in which case Customer shall agree on the possibility of accepting partial shipments or on a new delivery time, which shall not imply the Customer's right to cancel the order or to claim for any compensation.

10. Shipping costs

The Ex-Works Zaragoza delivery term shall not be waived by the fact that Product(s) are sent with shipping costs prepaid by LIBELIUM to the address disclosed by Customer, at Customer's prior request.

Product(s) shipped by LIBELIUM do not include any shipping insurance; any Customer interested in taking out said insurance must expressly inform LIBELIUM thereof in writing at the time of submitting an order, indicating the kind of coverage desired. The cost of the shipping insurance shall be invoiced to Customer as a part of the shipping costs.

11. Warranty

LIBELIUM guarantees that the Product(s) comply with the specifications contained in its offers for a period of one (1) year from the date of the invoice, provided that they are handled, shipped, stored and used according to the instructions to be found in the respective User's Handbooks. Therefore, LIBELIUM shall assume liability only for such non-conformities and defects which are proved to have been caused by actions or negligence committed before the Product(s) were delivered to the first carrier.

Customer shall check deliveries immediately after reception and shall inform LIBELIUM in writing about any complaint or claim concerning the Product(s) which may be put on the latter. After a seven (7) day period from delivery has elapsed, Customer shall not be entitled to bring any claim or complaint regarding qualitative shortcomings and such defects or non-conformities which should have been noticed in the inspection and LIBELIUM shall not be obliged to accept return of such Product(s). Claims for any hidden defects or non-conformities must be made to LIBELIUM in writing within thirty (30) days after OEM CUSTOMER or the End User learned of the defect, and in any event within the one (1) year term from the date of the invoice.

Provided that claims are made within the above time limits and form requirements and the claim is found justifiable, LIBELIUM shall remedy the defect, non-conformity or shortcoming at no additional cost to the Customer, choosing at its discretion, to provide the remedy either through replacing or amending the defective or non-conforming Product. Replacement Product(s) may be either new or equivalent in performance to new. LIBELIUM does not warrant that the operation of Product(s) will be uninterrupted or error free. Product(s) may contain remanufactured parts equivalent to new in performance or may have been subject to incidental use.

If your product is defective, please contact our After Sales Service through our website: <http://www.libelium.com/contact/>. Repair service can be obtained by sending your defective product to LIBELIUM (shipping costs pre-paid by You), according to the instructions to be found in our website. Some of our Product(s) are protected with a safety seal and by removing this seal, whenever it happens, You are waiving this warranty.

LIBELIUM's warranty covers the repairs (manpower and materials) of each manufacturing defect that may obstruct the right operation of the Product. The replacement of any component or damaged equipment does not mean an extension of the guarantee period. If the Product is found upon examination by LIBELIUM to be defective, LIBELIUM shall bear shipping costs incurred in returning the Product to Customer as well as all costs involved in LIBELIUM's examination of the Product. If the Product is found upon examination by LIBELIUM to not be defective, Customer shall bear shipping costs incurred in returning the Product to Customer.

LIBELIUM may, at its discretion, demand the Product claimed to be defective or non-conforming to be either returned or inspected or tested by an independent third party acceptable to LIBELIUM. OEM Customer shall arrange such returning, inspections or tests at LIBELIUM's request and the latter shall reimburse all reasonable expenses incurred in the returning, inspections or tests.

LIBELIUM shall assume no responsibility for any liabilities arising in connection with the use of the Product(s) against or not in accordance with any instructions given or for other purposes than those for which they have been intended.

No liability could be claimed against LIBELIUM should the defective Product be handled, amended or altered in any way by a third party other than LIBELIUM or its authorized After Sales Service.

LIBELIUM does not guarantee the integrity of the software or data stored on the Product that will be checked, repaired or upgraded. It is therefore recommended that the Customer make a backup before sending the Product.

This warranty is in lieu of all other warranties, expressed or implied, and no representative or person is authorized to assume for LIBELIUM any other liability in connection with the sale of the Product(s). In the event of a warranty claim LIBELIUM's entire and sole responsibility to OEM Customer and End User is as set forth above. No claims based on product liability shall be accepted by LIBELIUM in cases different than the ones established in the preceding paragraphs.

Under no circumstance shall LIBELIUM be liable for indirect, incidental or consequential damages caused by the Product(s), including but not limited to loss of data or of profit.

Except as herein expressly stated, the Product(s) are provided "as is" and there are no warranties, express or implied, by operation of law or otherwise, made or authorized to be made with respect to any Product(s) furnished hereunder. LIBELIUM disclaims any implied warranty of merchantability, fitness for a particular purpose, quiet enjoyment or non-infringement. In no event shall LIBELIUM be liable for any incidental, indirect, special, or consequential damages in connection with or arising out of these T&C or the existence, furnishing, functioning, performance or Customer's or any third party's use of any Product(s).

OEM Customer is responsible and liable to End User for any warranty found to have been given to them by OEM Customer in excess of the warranty provisions set forth herein and shall indemnify and hold LIBELIUM harmless for any unauthorized warranty provided by OEM Customer.

OEM Customer agrees to defend, indemnify and hold LIBELIUM harmless from all claims, injuries, costs, expenses and damages, including attorneys' fees, resulting from:

- a) Any warranties or representations concerning the Product(s), either expressed or implied, made by OEM Customer or its employees, which are beyond LIBELIUM's Warranty Policy;
- b) Any distribution or sale of the Product(s) by OEM Customer or its employees for a purpose or application that has not expressly been agreed upon by LIBELIUM;
- c) Any alteration of the Product(s) by OEM Customer or its employees that has not expressly been agreed upon by LIBELIUM;
- d) Failure by OEM Customer or its employees to maintain the Product(s) in saleable condition;
- e) Any fault made by OEM Customer or its employees during checking, testing or embedding of the Product(s);
- f) Any action brought against LIBELIUM by OEM Customer's employees.
- g) Any claim brought by OEM Customer's customers for injuries or damages of any kind (including but not limited to loss of or physical damage to the customer's tangible property, personal injury, death or economic loss), caused by products in which the Product(s) have been embedded by OEM Customer.

To the extent permitted by law, LIBELIUM's liability under this warranty is limited to a global amount of one hundred and fifty thousand Euro (150.000,00 €) for personal injury and three hundred thousand Euro (300.000,00 €) for material damages.

Please, read the documentation of the Product(s) for instructions about how to use the Product(s).

11.1. Hardware

The internal battery contained in some Product(s) can only be replaced by LIBELIUM's After Sales Service. Any attempt to replace said battery by the Customer or any third party shall imply a waiver of the warranty.

11.2. Software

LIBELIUM hereby waives any warranty concerning software developed by third suppliers. Access to such software is solely provided to facilitate operation of the Product(s) by Customers and to these effects, Customers must check and accept the Terms and Conditions of Use of each software supplier. Software adapted or developed by LIBELIUM for its Product(s) is offered "as is" without any express or implied warranty. LIBELIUM hereby advice Customers to avoid using this software for medical and health applications and, in general, in any critical system on which human lives or public health may depend (nuclear power plants, reservoir lock gates, security systems, etc.)

11.3. Product Certification

Detailed information about the certifications of the Products can be found in the respective Technical Guides. LIBELIUM does not warrant that the Products count on the certifications requested for this kind of products in any given country, so it is the Customer's and the OEM Customer's responsibility to check whether the Products can be imported and resold in the intended country of destination.

12. Liability waiver

Notwithstanding other liability waivers contained in section 11 of these T&C, LIBELIUM's warranty does not apply to non-conformities, defects, personal injuries or death resulting from:

- a) Improper or inadequate maintenance or calibration,
- b) Software, interfacing, parts, or supplies not supplied by LIBELIUM,
- c) Unauthorized modification or misuse,
- d) Operation outside of the published environmental specifications for the Product(s), or
- e) Improper storage, site preparation, wrong installation or maintenance,
- f) Replacement of the internal battery by the Customer or any third party other than LIBELIUM's After Sales Service,
- g) Damaged materials or parts as a result of normal wear and tear.
- h) Faulty performance of the products in which the Product(s) are embedded by the OEM Customer,
- i) Non-conformities and defects which are proved to have been caused by actions or negligence committed after the Product(s) were delivered to the first carrier.
- j) Non-performance or faulty performance of the Product(s) as a result of radio-frequency use restrictions or power broadcasting restrictions in any given country.
- k) Specific product certifications required in any given country.

13. Use of the documents

Use of the information contained in the Documents is subject to the following terms and conditions of use:

a) All Documents and any examples they contain are provided as-is and are subject to change without notice. Except to the extent prohibited by law, LIBELIUM makes no express or implied representation or warranty of any kind with regard to the Documents, and specifically disclaims the implied warranties and conditions of merchantability and fitness for a particular purpose.

b) LIBELIUM shall not be liable for any errors or incidental or consequential damage in connection with the furnishing, performance or use of the Documents and the examples included. No part of the Documents may be reproduced, stored in a retrieval system, or transmitted in any form or any means electronic or mechanical, including photocopying and recording, for any purpose other than the readers' personal use, without LIBELIUM's prior written consent.

c) LIBELIUM has created the Documents for the personal use of End Users as well as for external communication. The information in the Documents, whether in whole or in part, cannot be used for commercial purposes without the prior written consent of Libelium.

d) The information on LIBELIUM's Websites has been included in good faith for general informational purposes only. It should not be relied upon for any specific purpose and no representation or warranty is given as to its accuracy or completeness.

e) LIBELIUM has taken every care in the preparation of the website. However, as certain technical matters may be beyond its control, it cannot guarantee that Customers will have uninterrupted access to the Site at all times. .

f) LIBELIUM reserves the right, at its sole discretion, to modify, disable access to or discontinue, temporarily or permanently, any part or all of its websites or any information contained thereon without liability or notice to Customers.

g) LIBELIUM shall not be liable for any loss, damage, liability or expense incurred in or suffered that is claimed to have resulted from the use of the Documents, including, without limitation, any fault, error, omission, interruption or delay with respect thereto. The use of the Websites is at the Customer's sole risk.

h) Links on the Documents to third-parties' websites are provided solely as a convenience to End Users. By using these links, End User will leave LIBELIUM's websites. LIBELIUM has not reviewed all of these third-parties' documents/websites and does not control and is not responsible for any of these sites or their content. Access to any of these third-parties' documents/websites linked to this website, is entirely at the End User's own risk.

i) Customers must carefully read the User's Handbooks of the Product(s), especially sections "Before Using the Product(s)", "How to use the Product(s)", "Maintenance" and "Standardisations", before putting the Product(s) into operation. Provided that the Product(s) operate with radio-frequency modules Customers must carefully read section "Standardisations" to become aware of Product tests accomplished, their radio-frequencies and broadcasting powers. Installers assume all liability concerning gathering information on use restrictions of frequency bands in every country and acting according to any applicable regulation. LIBELIUM does not disclose the whole list of rules and regulations in force in every country. For further information please refer to:

CEPT ERC 70-03E - Technical Requirements, European restrictions and general requirements: <http://www.ero.dk>

R&TTE Directive - Equipment requirements, placement on market: <http://www.ero.dk>

14. Intellectual property

Libelium, MeshLium, Plug and Mesh!, Squidbee, SetMeBlue!, Cooking Hacks, WaspMote and Plug and Sense! and N-Vio names, designs and logos are trademarks of LIBELIUM (“the **Trademarks**”).

Some Product(s) are protected by patents and/or other intellectual property rights.

Nothing in the Documents or in these T&C shall be construed as to grant Customers a license or any other right on LIBELIUM’s trademarks, patents or other Intellectual Property rights. Customers are not permitted to copy, modify or use the trademarks without the prior written consent of LIBELIUM. The rest of trademarks that may appear in the Documents are the property of their owners.

End Users and OEM Customers shall refrain from incurring in any action that may obstruct the granting of pending patents or any other intellectual property right for which LIBELIUM may have applied.

The design and source codes in LIBELIUM’s websites, as well as any logo, trademark, trade name and any other symbols appearing in them belong to LIBELIUM or its suppliers and customers and are protected under the corresponding intellectual property regulations. Any use, reproduction, distribution, broadcasting, public disclosure, transformation or any other similar activity is prohibited unless LIBELIUM’s or their owners’ prior written consent is obtained.

The contents in LIBELIUM’s websites are also protected by LIBELIUM’s or its suppliers’ intellectual property rights. Their use or reproduction is subject to express citation of LIBELIUM’s URL address. This citation is only permitted though a cover image or explanatory text linking to the website; integration in a different website is expressly prohibited. Any other use of the contents of LIBELIUM’s websites requires LIBELIUM’s express written consent.

15. Privacy policy

15.1. Data protection

In order to comply with the provisions in Spanish Data Protection Act (L.O. 15/1999 of 13th December) and its implementing Regulation (R.D. 1720/2007, of 21st December), LIBELIUM hereby informs its Customers and websites users that any personal data supplied through the forms contained in its websites shall be recorded in the file named "CUSTOMERS" for which LIBELIUM is responsible, located at LIBELIUM's registered address and which has been registered with the Spanish General Registry for Data Protection (Registro General de Protección de Datos de la Agencia Española de Protección de Datos).

Except for those fields expressly requesting compulsory filling, answers to the questions contained in any form are voluntary and therefore, the lack of answer does not imply a reduction of the quantity or quality of LIBELIUM's services. The aim of this data collection are to provide access to LIBELIUM's online shop, to send information on LIBELIUM's Product(s) and services as well as to collect Customer's acceptance to the terms of use of the forums and other sections in LIBELIUM's websites. By filling these forms Customers consent in receiving promotional offers concerning LIBELIUM's Product(s) and services. You further consent further that LIBELIUM may make such data available to its services suppliers for the purposes of enabling service provision, after sales service, warranty and after sales follow-up.

Any User providing personal data through any of the forms in LIBELIUM's websites shall count on a 30 day period to inform LIBELIUM in writing of his/her refusal to the processing of his/her personal data. Unless this communication is made, it shall be deemed that the User consents the processing of his/her personal data according to the terms set forth in these T&C. All personal data collected shall be processed by using the security measures requested by Law to avoid their loss, damage or access by any unauthorised third party. User may nevertheless be aware of the fact that the existing security measures for computer systems on the Internet are not entirely trustworthy. Should you think that your email address has been disclosed to us without your consent, do not hesitate to inform us thereof. Users may at any time exercise their rights of access, rectification, update, cancellation and objection, as well as revoke the consent granted for all of any of the above-mentioned processings, by sending a written statement to LIBELIUM, either through the "Contact" section in our website <http://www.libelium.com> or by post to the following address: LIBELIUM COMUNICACIONES DISTRIBUIDAS, S.L., C/ Escatrón, 16 (Edificio LIBELIUM), 50014 Zaragoza, (Spain).

To exercise the above-mentioned rights you must indicate your name, ID/passport number, full address, date and signature, including any document supporting your request, in case it is needed; a copy of your ID card/passport must be enclosed, unless you use an electronic signature. User shall be liable for the veracity of data provided and only in case of holders of parental rights concerning children under fourteen and in connection with said children, shall LIBELIUM accept the disclosure of personal data concerning third parties. Users shall assume all liability for direct or consequential damages arising out of or in connection with the provision of false, inaccurate, incomplete or non updated data.

Furthermore, LIBELIUM reserves its right to exclude from any service for which prior registration is required, to any User having provided false data or failing to comply with these T&C, notwithstanding any other legal action to which LIBELIUM may be entitled. LIBELIUM reserves its right to modify its Privacy Policy or these T&C to adapt them to the regulations in force or for any other reason. Provided that the use of LIBELIUM's websites by Users shall be deemed as User's acceptance of LIBELIUM's Privacy Policy and T&C, User is hereby requested to check these T&C and any further amendments from time to time.

In addition to the foregoing considerations and with the aim of improving its after-sales service, LIBELIUM may record any or all telephone conversations with Customers and Users and store them in the above-mentioned "Customers" file. Unless expressly denied by Customers and Users, consent to the recording of these conversations shall be deemed granted by phoning to LIBELIUM's after-sales telephone numbers.

15.2. Privacy Policy

Users may visit LIBELIUM's websites without disclosing neither their identity nor any personal data. LIBELIUM's servers may only collect domain names but not email addresses of their visitors. This kind of information is used to elaborate reports on visit statistics, the time spent in the websites, websites accessed, the general origin of visitors (through "Favourites", search engines, links from other websites, etc.) to the sole purposes of getting information on how the websites are used and improving their contents and services.

15.3. Linked sites

LIBELIUM's websites may provide links to other sites but LIBELIUM assumes no liability on the privacy policies adopted by the linked sites, directly or indirectly. Links to other sites are provided as a suggestion only and do not imply LIBELIUM's warranty or liability concerning their quality, accuracy or contents of the information provided therein.

LIBELIUM does not warrant the veracity or accuracy of the information disclosed by its suppliers or third parties whose products or services are offered through LIBELIUM, their origin, ownership or the use or practical implementation made by Customers.

16. Applicable law and jurisdiction

These T&C shall be construed according to and governed by the Laws of the Kingdom of Spain.

The parties hereto, waiving any other right they may have, expressly agree that any dispute, discrepancy, question or claim arising from the performance or interpretation of these T&C or in connection with them, directly or indirectly, shall be submitted to the competent Courts in the City of Zaragoza (Spain).