

TERMS AND CONDITIONS OF SALE

1. **APPLICABILITY.** These Terms and Conditions of Sale (“**Terms**”) apply to the purchase of products and ancillary services (collectively the “**Products**”) by seller (“**Seller**”) and the buyer (“**Buyer**”), each of which is identified in the accompanying quotation, credit application, proposal, order acknowledgement, or invoice (the “**Sales Confirmation**”). These Terms and the Sales Confirmation comprise the entire agreement between the parties (collectively, the “**Agreement**”). Buyer accepts these Terms by signing and returning Seller’s quotation, by sending a purchase order in response to the quotation, or by Buyer’s instructions to Seller to ship the Product. No terms, conditions or warranties other than those identified in the quotation and no agreement or understanding, oral or written, in any way purporting to modify the terms and conditions whether contained in Buyer’s purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by Seller’s authorized representative. Buyer is hereby notified of Seller’s express rejection of any terms inconsistent with this Agreement or to any other terms proposed by Buyer in accepting Seller’s quotation. Neither Seller’s subsequent lack of objection to any terms, nor the delivery of the products or services, shall constitute an agreement by Seller to any terms.
2. **CANCELLATION.** Cancellation or modifications of all or part of any order are subject to Seller’s prior written consent in each instance. If cancellation or modification is allowed, Buyer agrees to pay to Seller all expenses incurred and damage sustained by Seller on account of the cancellation or modification, plus a reasonable profit.
3. **PRICE.** Prices in any Sales Confirmation from Seller are subject to change upon notice sent to Buyer at any time before the Sales Confirmation has been accepted. Any Taxes related to the Products purchased pursuant to this Agreement are the responsibility of Buyer (excluding taxes based on Seller’s net income), unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. If possible, Seller will bill Taxes as a separate item on the invoice presented to Buyer. If any exemption certificate presented by Buyer is held to be invalid, then Buyer will pay Seller the amount of the Tax and any penalties and interest related thereto.
4. **PAYMENT.** Unless otherwise set forth in the Sales Confirmation, Buyer will pay all invoiced amounts within thirty (30) days following the date of Seller’s invoice. Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Seller’s reasonable costs of collection. Seller reserves all other rights granted to a seller under the Uniform Commercial Code (“**UCC**”) for Buyer’s failure to pay for the Products or any other breach by Buyer of these Terms. In addition to all other remedies available to Seller (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery of any Products if Buyer fails to pay any amounts when due and the failure continues for five (5) days following Buyer’s receipt of notice thereof. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller’s breach, bankruptcy, or otherwise.
5. **DELIVERY; SHIPPING.**

(a) Seller will deliver the Products within a reasonable time after receiving Buyer’s purchase order, subject to their availability. The delivery date provided by Seller for the Products is only an estimate and is based upon prompt receipt of all necessary information from Buyer. If Buyer causes Seller to delay shipment or completion of the Products, Seller will be entitled to any and all extra costs and expenses resulting from the delay. Seller will not be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated will not be a material breach of contract on Seller’s part.

(b) Unless otherwise agreed in writing by the parties, Seller will deliver the Products, EXW (Incoterms® 2010) at the location specified in the Sales Confirmation (the “**Delivery Location**”), using Seller’s standard methods for packaging and shipping same. Buyer will take delivery of the Products within three (3) days of Seller’s notice that the Products have been delivered to the Delivery Location. If Buyer fails to take delivery of the Products within this three (3) day period Buyer will pay Seller for the Products and all storage expenses incurred by Seller. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the units shipped whether the shipment is in whole or partial

fulfillment of Buyer's purchase order. Buyer is responsible for obtaining any import licenses and other consents required for a Product shipment at its own expense, and will provide the licenses and consents to the Seller before shipment.

(c) The quantity of any installment of the Products, as recorded by Seller on the dispatch from Seller's place of business, is conclusive evidence of the quantity received by Buyer upon delivery, unless Buyer provides conclusive evidence to the contrary. Seller will not be liable for any non-delivery of the Products to the Delivery Location, unless Buyer gives written notice to Seller of the non-delivery within five (5) days following the date that Buyer would, in the ordinary course of business, have received the Products. Seller's liability for any non-delivery of the Products will be limited to replacing the Products within a reasonable time or adjusting the invoice for the Products to reflect the actual quantity delivered.

6. TITLE; RISK OF LOSS.

(a) Risk of loss or damage passes to Buyer upon delivery to the carrier. If Buyer fails to accept delivery of any of the Products on the date set forth in Seller's notice that Seller has delivered the Products to the Delivery Location, or if Seller is unable to deliver the Products to the Delivery Location on the date because Buyer has failed to provide appropriate instructions, documents, licenses, or authorizations, then: (i) risk of loss to the Products will pass to Buyer; (ii) the Products will be deemed to have been delivered to Buyer; and (iii) Seller, at its option, may store the Products until Buyer takes possession of them, at which time Buyer will be liable for all costs and expenses resulting from the failure (including but not limited to the cost of storage and insurance).

(b) Title passes to Buyer upon Buyer's payment in full for the Products.

7. INSPECTION; REJECTION OF PRODUCTS.

(a) As used in this Section 7, "**Nonconforming Products**" means only the following: (i) the items shipped are different from those identified in Buyer's purchase order; or (ii) the labels or packaging of the items incorrectly identifies them. Buyer will inspect the Products within five (5) days following receipt thereof (the "**Inspection Period**"). The Products will be deemed accepted at the end of the Inspection Period unless Buyer notifies Seller in writing of any Nonconforming Products and furnishes Seller with written evidence or other documentation reasonable required by Seller.

(b) If Buyer timely and properly notifies Seller of any Nonconforming Products, then Seller will, in its sole discretion, (i) replace the Nonconforming Products with conforming Products or (ii) credit or refund the purchase price for the Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer. At Seller's request, Buyer will dispose of the Nonconforming Products or return the Nonconforming Products to Seller at Seller's expense. Upon receipt of the Nonconforming Products, Seller will promptly refund the monies owed or ship the replacement Products to the Delivery Location at Seller's expense, with Seller retaining the risk of loss until delivery.

(c) Buyer acknowledges and agrees that the remedies set forth in this Section 7 are Buyer's exclusive remedies for the delivery of Nonconforming Products, and except as set forth in this Section 7, Buyer has no right to return the Products to Seller without Seller's written authorization.

8. **LIMITED WARRANTY.**

(a) Seller warrants to Buyer that the Products will be free from defects in material and workmanship for a period of thirty (30) days following the date of delivery to the Delivery Location (the “**Warranty Period**”). If, prior to the expiration of the Warranty Period, Buyer informs Seller in writing of any breach of this limited warranty, then Seller may repair or replace the Products that gave rise to the breach or, in Seller’s sole and exclusive discretion, refund the amounts that Buyer paid for the Products.

(b) The foregoing limited warranties do not apply to any defect in Products not manufactured by Seller; and any Products manufactured according to Buyer’s specifications.

(c) THE REMEDIES SET FORTH IN THIS SECTION 8 ARE BUYER’S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 8. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OF ANY KIND, AND SELLER DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. **INDEMNIFICATION.**

(a) Buyer will defend, indemnify, and hold harmless Seller and its affiliates from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) (“**Claims**”) arising out of or occurring in connection with the negligence or willful misconduct of Buyer or its employees or agents, including but not limited to: (i) any misuse or modification of the Products by Buyer, (ii) any act (or failure to act) by Buyer in contravention of any safety procedures or instructions that Seller provides to Buyer, or (iii) the failure to store, install, operate, or maintain the Products in accordance with the Instructions.

(b) Seller will defend, indemnify, and hold harmless Buyer from and against any Claims arising out of or occurring in connection with the negligence or willful misconduct of Seller or its employees or agents.

10. **INFRINGEMENT.**

(a) Seller will defend, at its own expense, any action against Buyer brought by a third party to the extent that the action is based upon a claim that the Products infringe any U.S. patents or copyrights, or misappropriate any trade secrets, of a third party. Seller will pay those costs and damages finally awarded against Buyer in any the action that are specifically attributable to the claim or those costs and damages agreed to in a monetary settlement of the action.

(b) The foregoing obligations are conditioned on Buyer (i) notifying Seller promptly in writing of the action, (ii) making no admission of liability and giving Seller sole control of the defense thereof and any related settlement negotiations, and (iii) cooperating and, at Seller’s request and expense, assisting in the defense.

(c) If the Products become, or in Seller’s opinion are likely to become, the subject of an infringement claim, Seller may, at its option and expense, either (i) procure for Buyer the right to continue using the Products, (ii) replace or modify the Products so that they become non-infringing, or (iii) accept return of the Products and refund Buyer the amounts actually paid by Buyer to Seller for the Products.

(d) Notwithstanding the foregoing, Seller will have no obligation under this Section 10 or otherwise with respect to any infringement claim based upon any: (i) misuse or modification of the Products by Buyer or its employees or agents, (ii) use of the Products in combination with other materials, goods, products, or services for which the Products were not intended to be used, (iii) failure of Buyer to implement any update provided by Seller that would have prevented the claim, (iv) Products that Seller made to Buyer's specifications or designs.

(e) THIS SECTION 10 STATES SELLER'S ENTIRE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

11. **LIMITATIONS OF LIABILITY.**

(a) IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES.

(b) EXCEPT FOR DEATH OR BODILY INJURY RESULTING FROM SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT, SELLER'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE GOODS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE GOODS GIVING RISE TO THE CLAIM.

12. **CHANGES.** Seller reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to Buyer.

13. **NO LICENSE.**

(a) Except as provided in Section 13(b), the sale of the Products will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name of Seller in connection with any the Products, other than with respect to the resale of the Products pre-marked or packaged by or on behalf of Seller.

(b) If software is provided by Seller under the Agreement, Buyer agrees that the software may only be used in accordance with the terms and conditions of the software license agreement that accompanies the software. Buyer agrees not to directly or indirectly decompile, disassemble, reverse engineer or otherwise derive the source code for the software. If Buyer is a U.S. Government agency, Buyer acknowledges that the software licensed under the Agreement is a commercial item that has been developed at private expense and not under a Government contract. The Government's rights' relating to the software are limited to those rights applicable to Buyer's as set forth herein and is binding on Government users in accordance with Federal Acquisition Regulation 48 C.F.R. Section 12.212 for non-defense agencies and/or Defense FAR Supplement 48 C.F.R. Section 227.7202-1 for defense agencies.

14. **TERMINATION.** In addition to any other remedies that Seller may have, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and the failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership,

reorganization or assignment for the benefit of creditors.

15. **CONFIDENTIALITY.** All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that Seller discloses to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as “confidential,” in connection with the Agreement is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section 15, without having to post bond or establish the insufficiency of a remedy at law. This Section 15 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.
16. **FORCE MAJEURE.** Seller will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of Seller, including but not limited to fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, Seller will not be obligated to seek or obtain any settlement that, in Seller’s sole judgment, is not in Seller’s best interest.
17. **GOVERNING LAW.**
- (a) All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action or proceeding arising out of or relating to these Terms will be instituted in the federal or State courts located in San Jose, California. Each party irrevocably submits to the exclusive jurisdiction of the courts in any the suit, action or proceeding.
18. **SURVIVAL.** In addition to any other term whose context may so require, the terms contained in this Agreement will survive any cancellation of the purchase order.