

1. Definitions

- 1.1 “**Acknowledgement**” means Company’s written acceptance of the Purchaser’s PO and/or SOW by means of Company’s order acknowledgment form or its equivalent, including and incorporating these Terms and all other form text and attachments provided by Company.
- 1.2 “**Background Technology**” means programming conventions, source code, object code, processes, development tools, layouts, methods, techniques, know-how, show-how, or other tools of the trade owned by Company, in Company’s possession, or available for use by Company in performing its duties hereunder, or otherwise available in the public domain, and that have general utility in the industry in which Company engages in business.
- 1.3 “**Company**” means Gateworks, LLC.
- 1.4 “**Confidential Information**” means information, materials, and/or technology concerning Company’s business (including that of all corporate affiliates and subcontractors) and Company’s proprietary information, which may include, but is not limited to, lists of, or other information relating to and identified with current, former, or prospective customers or applicants, business volumes or usage, financial information, pricing information, information related to actual or contemplated mergers or acquisitions, security procedures, information concerning business plans or business strategy, Merchandise, Patent, copyright, trade secret, and other proprietary information, data, inventions, information related to the Company’s current, future, and proposed products and services.
- 1.5 “**Contract**” means these Terms, any price list or schedule, quotation, acknowledgment, or invoice from Company relevant to the sale, license, and/or supply of the Merchandise and all documents incorporated by specific reference herein or therein, which shall constitute the complete and exclusive statement of the terms of the agreement governing the sale by Company to Purchaser, subject to the order of priority provided for herein.
- 1.6 “**Cyber Attack**” means cyber-attack, intrusion attempt, disruption, unauthorized third-party access or use, and/or other malicious activity directed to a computer, system, or network.
- 1.7 “**Day**” means any day except Saturdays, Sundays, and public holidays at Company’s office named in the Contract.
- 1.8 “**Documentation**” means any manual(s), drawing(s), and/or other document(s) that is/are supplied with the Merchandise.
- 1.9 “**Firmware**” is a subset of Software and means any firmware incorporated into Merchandise supplied by Company under the Contract, PO, and/or SOW, including but not limited to input/output systems, firmware interface systems, and programming providing for communications with and/or control of hardware and devices.
- 1.10 “**Force Majeure Event**” means unforeseen circumstances or causes beyond a party’s reasonable control, including but not limited to acts of God; war; epidemic; pandemic, armed conflict; terrorism; fire; flood; accident; weather; failure or interruption of public and private computer, telecommunication, or transportation systems, networks, and/or infrastructure; Cyber Attacks; port congestion; sabotage; strikes or labor disputes; civil disturbances or riots; governmental decisions, requests, restrictions, Law (including but not limited to the denial, failure to issue, or loss of export or re-export licenses); unavailability of or delays in transport; or shortage of labor, materials, or parts.
- 1.11 “**Law**” means applicable law, including but not limited to administrative, executive, and/or legislative statutory rules and regulations, decrees, directives, orders, by-laws, and ordinances having the force of law.
- 1.12 “**Merchandise**” means Background Technology, Documentation, Firmware, Goods, Products, Services, and/or Software, individually and/or collectively.
- 1.13 “**Parties**” means the participants entering the Contract, PO, or SOW.
- 1.14 “**Patent**” means inventions, whether filed or unfiled, and whether patentable or unpatentable.
- 1.15 “**Personnel**” means anyone who works for a party (or for a party’s subcontractor), including employees and contract staff.
- 1.16 “**Products**” means the goods, articles, and/or devices specified in the Contract, PO, and/or SOW.
- 1.17 “**Purchaser**” means the person, firm, or company to whom Company may agree to sell or otherwise supply Merchandise. If Purchaser is a firm or company, then the definition includes any other organizations which are or hereafter become subsidiaries of, or are otherwise controlled by such firm or company, or which may hereafter acquire a controlling interest in such firm or company.
- 1.18 “**Purchase Order**” and “**PO**” mean a purchase order or other acceptance of Company’s quotation issued by the Purchaser to Company.
- 1.19 “**Services**” means work, labor, or other services that Company must perform or otherwise performs under the Contract, PO, and/or SOW.
- 1.20 “**Software**” means any and all computer programs, instructions, procedures, rules, and/or routines in machine readable object code, including but not limited to firmware and any improvements or modifications, that Company licenses to Purchaser and/or otherwise supplies under the Contract, PO, and/or SOW.
- 1.21 “**SOW**” means Statement of Work in contracts for Services.
- 1.22 “**Terms**” mean these Terms and Conditions for Sales.

2. General

- 2.1 These Terms govern Company’s quotation, Acknowledgment, any PO or SOW, and any resulting Contract for Company to supply Merchandise.
- 2.2 All quotations are made, all POs and SOWs accepted, and all Contracts formed are subject to these Terms. All other conditions provided by Purchaser or implied by law are excluded from the Contract unless expressly accepted by Company in a mutually executed writing.
- 2.3 FOR THE AVOIDANCE OF DOUBT, ANY PURCHASER’S TERMS AND CONDITIONS SHALL AT ALL TIMES BE DEEMED NULL AND VOID UNLESS EXPRESSLY ACCEPTED IN ADVANCE BY COMPANY IN A MUTUALLY EXECUTED WRITING.
- 2.4 Requests or requirements not specifically mentioned in Company’s quoted prices, such as special certification, inventory reports, toll lists, tool condition reports, source inspection, special forms, etc., may result in additional charges to Purchaser. Company’s quotation is valid for acceptance for thirty (30) calendar days after its date, unless Company states a different period in writing or withdraws the quotation earlier (collectively, the “Expiration”). After Expiration of such quotation, Purchaser must inquire of Company for a new quotation or written confirmation of existing quotation.

- 2.5 **Order of Priority:** Subject to these Terms, if there are any conflicts, discrepancies or ambiguities, the following order of priority applies: (a) fully executed written Master Purchase, Services, and/or Supply Agreement between Company and Purchaser, (b) Company’s quotation or Company’s SOW; (c) Company’s Acknowledgment; (d) these Terms; and (e) the Purchaser’s PO or SOW.
- 2.6 Subject to these Terms, in the absence of a written and fully executed agreement or Master Purchase, Services or Supply Agreement between Company and Purchaser, the Contract shall be constituted by: (a) delivery of a signed PO or signed SOW to Company, and (b) the acceptance by Company of said PO or SOW by the return of a written Acknowledgment or in such other manner as Company determines in writing from time to time. All POs and SOWs must be placed in writing on official Purchaser letterhead, by mail, facsimile, or e-mail addressed to Company. A PO or SOW has no effect until written Acknowledgment by Company, which is not obliged to accept any PO or SOW. Unless otherwise agreed to in writing by the Parties, by accepting the Merchandise hereunder, Purchaser hereby agrees to be bound by these Terms. Previous dealings between Company and Purchaser shall not vary or replace these Terms.
- 2.7 PURCHASER HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD COMPANY HARMLESS FROM ANY AND ALL CLAIMS, COSTS, LIABILITIES, LOSSES, OR DAMAGES SUFFERED BY COMPANY ARISING OUT OF OR RELATED TO ANY BREACH BY PURCHASER OF ANY OF THE TERMS SET FORTH HEREIN.
- 2.8 Unless governed by a fully executed written Master agreement, Company’s offer to sell and/or Company’s acceptance of any PO or SOW is expressly conditioned upon the Purchaser’s assent to these Terms. Purchaser’s acceptance of any offer by Company is unqualified, unconditional, and subject only to these Terms. Purchaser may not assert, as a defense to the enforcement of these Terms, any conditions or limitations made in Purchaser’s request for quotation, PO, SOW, order, acceptance, acknowledgment, or the like.
- 2.9 Purchaser is responsible for the accuracy and completeness of all information it supplies. Company, at its sole discretion, may discontinue Merchandise. Nothing in this Agreement shall preclude Company from providing similar Merchandise to other customers.
3. **Prices**
- 3.1 All prices, Software license fees, Firmware license fees, and rates to Purchaser (a) are fixed for Merchandise within any Contract time period except as provided in these Terms, (b) are Ex-Works (Incoterms® 2020), Company facility, (c) are subject to quarterly price adjustment to extent the Merchandise contains commodity based components that are subject to market fluctuations (including RAM), and (d) do NOT include any applicable foreign, federal, state, or local sales, use, excise, or other taxes, duties, levies, freight, packing, handling, storage, installation, start-up, maintenance, insurance, or surcharge, unless otherwise agreed to in writing by Company, all of which shall be the sole liability of Purchaser. Company shall charge applicable duty, tariffs, value-added tax or goods, and services taxes, together with any and all such other taxes and charges as shall be applicable to Purchaser’s order. All prices are quoted in the currency shown on the face of the Contract, PO, or SOW.
- 3.2 Unless specifically stated to the contrary within an applicable Contract, PO, or SOW and agreed to by Company, all Services will be provided on a time-and-materials basis. Purchaser acknowledges that all quotations and/or estimates provided are, unless specifically stated otherwise, estimates, and do not constitute firm price quotes, fixed project fees or otherwise constitute “not to exceed” or maximum project pricing.
4. **Shipment and Delivery**
- 4.1 Line items within a Contract, PO, or SOW should be scheduled per the published or quoted lead time. Earlier lead times requested by Purchaser are subject to agreement by Company and a surcharge, which is calculated and agreed to in Company’s sole discretion.
- 4.2 Contract or Order Cancellation is not permitted without written approval from Company’s management. As a courtesy, Purchaser is permitted to reschedule a delivery date once, which must be requested sixty (60) calendar days prior to original promise date and the reschedule date can be no later than ninety (90) calendar days after the original promise date. Requests for an earlier delivery date (a/k/a pull-in requests) are not permitted if the requested ship date is within seven (7) calendar days of the current promise date.
- 4.3 Delivery and performance time periods begin on the date of the Acknowledgment. Delivery dates are only approximate dates based on Company’s estimates. Company will exercise commercially reasonable efforts to ship on schedule, but regardless shall not ever be liable for any damages or losses, of any kind or nature, which may be caused by any delay in shipment or delivery, including, but not limited to delay caused by a Force Majeure Event. Risk of loss, injury, or destruction will pass to Purchaser at the time of delivery to the carrier for shipment. Absent specific written instructions otherwise, Company will select a carrier with invoice to Purchaser.
- 4.4 Company will not accept changes to shipping method within seven (7) calendar days of the scheduled date of shipment. Any shipments that are not picked up by the delivery date will incur a storage fee of 1% per calendar day.
- 4.5 Company may ship batteries separately and may make partial shipments. Documentation and hard copies may be shipped separately.
- 4.6 **Storage/Warehousing Option.** Company may place Goods, Products, and/or Documentation into a third-party storage or warehouse of Company’s choice at Purchaser’s expense if Purchaser delays shipment or delivery by its acts or omissions. Delivery is complete upon placing Goods, Products, and/or Documentation in storage/warehouse, and risk of loss and title in such Goods, Products and Documentation passes to Purchaser. This subsection does not apply to Goods, Products, or Documentation that is to be exported from the United States by Company.
- 4.7 Except as stated in the “Storage/Warehousing Option” subsection and the “Intellectual Property and Confidential Information Section, or if provided for in the Contract: (a) for any Goods, Products and/or physical copies of licensed Documentation which Company is to export from the United States, title, and risk of loss will pass to Purchaser when said Goods, Products and/or physical copies of licensed Documentation pass the territorial limits of the U.S.; (b) for all other Products and/or physical copies of licensed Documentation, title will pass to Purchaser on delivery, and risk of loss will pass to Purchaser under the Incoterms® 2020 rule. Company will ship from Company’s or a third-party’s factory or warehouse (the delivery point), Ex-Works, to the place of destination named in the Contract (Incoterms® 2020). Purchaser will pay for packing

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and handling at Company's then current rates. All freight costs and expenses shall be the responsibility of Purchaser.

5. Payment

- 5.1 All payments and remittances shall be made by Purchaser to Company in full without set-off, counterclaim, or withholding (except deductions required by Law) at the address shown on the invoice within net thirty (30) calendar days of invoice. All payments shall be made in the currency invoiced by Company. Wire transfers shall be applied per instruction shown on the face of the Contract, PO, or SOW. If at any time in the judgment of Company, Purchaser's financial condition or credit shall appear not to warrant shipment of Merchandise, Company may, at its option, require full payment prior to shipment, or refuse to ship and terminate any outstanding order without liability to Company. Delinquent accounts are subject to the lesser of an interest charge of 6% per month beginning at due date, or the highest rate permissible under applicable law, compounded monthly. If Purchaser fails to pay any invoice in accordance with the foregoing, Company reserves the right, in addition to and among other remedies available to it, to suspend its performance of any or all work hereunder or under any applicable Contract, PO, or SOW.
- 5.2 As collateral security for the payment of the purchase price of the Merchandise, Purchaser hereby grants to Company a lien on and purchase money security interest ("PMSI") in and to all of the right, title, and interest of Company in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including but not limited to insurance proceeds) of the foregoing. Without affecting any of Company's other rights, Company may at any time demand security for payment it deems reasonable, and Purchaser will provide the security within ten (10) days after the request. Purchaser's failure to pay any amount when due shall give Company the right to repossess and remove the Products. Purchaser agrees, without further consideration, at any time to do or cause to be done, executed and delivered, all such further acts and instruments including but not limited to a security agreement, as Company may reasonably request in order to perfect Company's PMSI. Purchaser agrees that Company shall have the authority to file any documents necessary, including but not limited to, any UCC-1 (or similar) financing statement, continuation statement or amendment, to perfect and maintain the perfection of Company's PMSI granted here under and/or pursuant to a security agreement.
- 5.3 Company will invoice Merchandise and/or license fees on shipment and will invoice monthly Services and any additional costs in arrears.
- 5.4 Purchaser waives the right to dispute any invoiced amount unless, within ten (10) days from the invoice date, Purchaser notifies Company in writing of specific reasons for a dispute. All undisputed amounts are payable as set out herein.
- 5.5 Purchaser shall pay, up to the maximum amounts permitted by Law, all expenses (including but not limited to attorneys' fees) incurred by Company in collecting late payments.

6. Limited Warranty

- 6.1 Company warrants that it will transfer title to the Products (for the avoidance of doubt, excluding title to Background Technology, Software, and/or Firmware) to Purchaser pursuant to the "Shipment and Delivery" and the "Intellectual Property & Confidential Information" sections of these Terms. Company warrants that Products made by Company will be free from defects in materials or workmanship under normal use and care. Company warrants that at the time of the final delivery of the Merchandise, the same will materially conform to the description listed in the applicable Datasheet, PO, or SOW. Company has the right, exercisable in its sole discretion, to substitute comparable Merchandise.
- 6.2 **Warranty Periods.** Unless otherwise specified by Company in writing, the limited warranties herein apply as follows:
- 6.2.1 **Products: for twelve (12) months from date of shipment.**
- 6.2.2 **Services: for ninety (90) calendar days from substantial completion of the Services.**
- 6.2.3 **Repaired or replaced Products, and Services re-performed: For ninety (90) calendar days from date of shipment of the replacement or completion of the repair or re-performance, or until the end of the original warranty period (if later).**
- 6.2.4 **Software: for thirty (30) days from date of purchase.**
- 6.3 THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE WARRANTIES EXPRESSLY STATED HEREIN. COMPANY DOES NOT WARRANT THAT MERCHANDISE SHALL BE DELIVERED FREE FROM RIGHTFUL CLAIM OF ANY THIRD PARTY BY WAY OF INFRINGEMENT OR THE LIKE. NO PERSON IS AUTHORIZED TO REPRESENT, PROMISE OR ASSUME ANY OBLIGATION OR LIABILITY CONTRARY OR IN ADDITION TO THIS WARRANTY. ALL OTHER WARRANTIES ARE SPECIFICALLY AND EXPRESSLY DISCLAIMED AND EXCLUDED.
- 6.4 **NOT FOR USE IN SPECIALIZED USES AND INDEMNIFICATION:** THE PARTIES ACKNOWLEDGE THAT COMPANY'S PRODUCTS, DOCUMENTATION, SOFTWARE, FIRMWARE, SERVICES, SUBCOMPONENTS AND BACKGROUND TECHNOLOGY ARE NOT SPECIFICALLY DESIGNED OR TESTED BY COMPANY FOR USE IN ANY LIFE SUPPORT, MEDICAL, NUCLEAR, OR OTHER APPLICATION WHERE MALFUNCTION CAN REASONABLY BE EXPECTED TO RESULT IN DEATH, PERSONAL INJURY, OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE INCLUDING, WITHOUT LIMITATION, AUTOMOTIVE, HAZARDOUS MATERIAL, LIFE SUPPORT, MEDICAL, MEDICAL DEVICE MANUFACTURING, MILITARY, SURGICAL, UNUSUAL OR SEVERE ENVIRONMENTAL, OR FOR ANY SIMILAR APPLICATIONS, DEVICES, SYSTEMS, OR LIFE SUSTAINING EQUIPMENT AND THE LIKE (COLLECTIVELY, "SPECIALIZED USES"). COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY PRODUCTS MEET THE STANDARDS THAT MAY BE REQUIRED FOR USE OF THE PRODUCTS FOR SPECIALIZED USES AND ANY SUCH USE BY CUSTOMER IS AT CUSTOMER'S OWN RISK. Customer (a) accepts the Merchandise knowing the limitations set forth herein, (b) agrees to communicate such restrictions in writing to any and all subsequent purchasers or users, and (c) AGREES TO DEFEND, INDEMNIFY, AND HOLD COMPANY HARMLESS FROM ANY AND ALL CLAIMS, COSTS, DAMAGES, JUDGMENTS, LIABILITIES, LOSSES, AND SUITS, INCLUDING BUT NOT LIMITED TO INCIDENTAL AND CONSEQUENTIAL DAMAGES, ARISING

FROM OR RELATED IN ANY MANNER TO ANY SPECIALIZED USE OF MERCHANDISE, WHETHER BASED IN TORT, CONTRACT, OR OTHERWISE.

6.5

Exclusions from Warranty.

- 6.6.1 Company makes no warranties or representations that the Merchandise is manufactured and/or provided in accordance with quality standards that may be required for any Specialized Use. Purchaser accepts all Merchandise with these restrictions. Purchaser is responsible for providing appropriate notice of these restrictions in writing to all subsequent buyers or users.
- 6.6.2 Any warranty herein excludes, and Purchaser will pay the cost of, all repairs and/or replacements caused by any of the following: normal wear and use; inadequate maintenance; unsuitable power sources or environmental conditions; improper handling, storage, installation, or operation; misuse or accident caused by anyone except Company; modification or repair not approved by Company in writing; materials or workmanship made, provided, or specified by Purchaser; contamination; the use of unapproved parts, firmware, or software; Cyber Attack; neglect; subjection to adverse conditions, demands exceeding performance levels required by applicable specifications or operating instructions furnished by Company; any other cause not the fault (including but not limited to partial fault) of Company.
- 6.6.3 Company will not pay any costs relating to non-compliance with a warranty herein, except where agreed in writing in advance. Unless accepted by Company in writing, Purchaser will pay: (a) all costs of dismantling, freight, reinstallation, and the time and expenses of Company Personnel for travel under this Section; and (b) all costs incurred by Company in correcting nonconformities for which Company is not responsible under this Section and in examining items that comply with the warranties herein.
- 6.6.4 If Company relies on incomplete and/or incorrect information supplied by Purchaser, all warranties are void unless Company agrees otherwise in writing.
- 6.6.5 Purchaser alone is responsible for the selection, maintenance, and use of the Products.
- 6.6 Resale Products carry only the warranty given by the original manufacturer. Company has no liability for Resale Products beyond making a reasonable commercial effort to arrange procurement and shipping of the Resale Products as qualified by these Terms.
- 6.7 **Disclaimer.** The limited warranties set out in this Section are the only warranties by Company.
- ## 7. Non-Conforming Products/Limitation of Liability
- 7.1 Purchaser agrees to inspect the Merchandise within thirty (30) calendar days of date of delivery and if Purchaser alleges that it has received non-conforming or damaged Merchandise, Purchaser must provide written notice to Company within such thirty (30) calendar days, failing which all claims shall be deemed to be waived and the Merchandise to have been accepted by Purchaser. Purchaser's written notice must include the part number of the Merchandise, a description of the characteristics that are allegedly non-conforming, along with any further unique reference(s) that may appear. Upon Company's review of the written notice, if approved by Company, Company will issue a Return Material Authorization number allowing Purchaser to return the allegedly non-conforming Merchandise. Upon receipt of the entire quantity of allegedly non-conforming material, Company shall inspect the allegedly non-conforming material to verify Purchaser's alleged claim. If Company determines the material is conforming and/or suspects bad faith from Purchaser, Company may, in Company's sole discretion, resend the material to Purchaser and invoice Purchaser for Company's expenses. If Company confirms the non-conforming status of the material, Company will, in its sole discretion, either (a) replace the Merchandise on a like-for-like basis, or (b) issue credit to Purchaser's account with Company. The issuance of debit notes by Purchaser awaiting a potential credit on damaged or non-conforming material will not be accepted by Company as having discharged the liability of the debt incurred on the issuance of the original invoice. Claims for shortage of delivery of Merchandise must be submitted to Company within five (5) Days of date of receipt. Company will not accept any liability for the actions of Purchaser's designated freight forwarder or carrier and, as such, no claim may be made against Company for such delivery shortages. No claim by Purchaser regarding certain Merchandise, whether in one or more orders, shall be accepted as a reason for cancellation of any other orders, or the remainder of any order, part of which is subject to the claim. Merchandise supplied by Company must be stored, carried, processed, installed, and/or otherwise handled or dealt with in accordance with Company's published instructions and in accordance with normal safety procedures for handling. Company shall not be liable for any loss, damage, injury, or expense arising out of the Merchandise or their condition if this is not done. Company shall not be liable to replace any Merchandise rejected only on the grounds of cosmetic or immaterial imperfections or variations in the manufacturing process.
- 7.2 **Limitation of Liability.** In the event of any claim against Company with respect to any matter whatsoever, Company's liability (if any) shall be limited to either (a) replacement if required and practicable, of the Merchandise from which the liability arises; or (b) Purchaser shall be given a credit for the invoiced value of the particular Merchandise from which the liability arises. The maximum amount of Company's liability shall be the invoice value of the particular Merchandise sold by Company to Purchaser.
- 7.3 EXCEPT AS SET FORTH IN THESE TERMS, COMPANY SHALL HAVE NO FURTHER LIABILITY FOR DAMAGES, EXPENSES, LIABILITIES, LOSSES, OR INJURY OF ANY KIND, WHETHER TO PURCHASER OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, PERSONAL INJURIES, AND/OR PROPERTY DAMAGE, HOWEVER RESULTING, WHETHER FROM THE USE, CONDITION, OR FAILURE OF COMPANY'S MERCHANDISE. COMPANY SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. PURCHASER'S REMEDIES STATED IN THE CONTRACT OR IN THESE TERMS, IF NO CONTRACT EXISTS, ARE EXCLUSIVE, REGARDLESS OF THE TYPE OF THE CLAIM (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, AND/OR OTHERWISE), COMPANY'S LIABILITY TO PURCHASER AND ANY OTHER PARTY, AS ALLOWED BY APPLICABLE LAW, WILL NEVER EXCEED THE CONTRACT PRICE. NEITHER PARTY SHALL EVER BE LIABLE FOR: (A) DAMAGES FOR LOSS OR CORRUPTION OF DATA OR CYBER ATTACKS; OR (B) INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. "CONSEQUENTIAL DAMAGES" INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE, PRODUCTION OR USE, DELAY

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- DAMAGES AND COSTS INCURRED, INCLUDING BUT NOT LIMITED TO, FOR CAPITAL, FUEL AND POWER, REPLACEMENT PRODUCT, AND CLAIMS OF EACH PARTY'S AFFILIATES.
- 7.4 No action, regardless of form, relating to these Terms, or any Contract, PO or SOW, may be brought more than two (2) years after either (a) the claim arose or (b) after Purchaser should have known of the first act, occurrence, circumstance, or omission upon which such claim or cause of action, or any part thereof, is based, whichever first expires.
- 7.5 THE PARTIES EXPRESSLY AGREE THAT THE MERCHANDISE ARE NOT CONSIDERED TO BE GOODS FOR USE PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES, OR CONSUMER GOODS, FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE OR OTHERWISE.
8. **Modification or Addition of Terms and Conditions**
No modification of, addition to, or waiver of any of the Terms stated herein shall be binding upon Company except by express written consent of an authorized officer of Company, which expressly refers to the provisions hereof. Waiver by Company, or invalidation by any court of any specific term, condition, right, or remedy contained herein, shall not be construed as waiver of any other term, condition, right, or remedy. All typographical or clerical errors made by Company in any quotation, Acknowledgment, Contract, or publication are subject to correction without liability to Company.
9. **Intellectual Property and Confidential Information**
- 9.1 **Background Technology.** Notwithstanding any other provision, title to and ownership of Background Technology and other materials previously developed or copyrighted by Company or developed independently of Company's obligations to Purchaser under any Contract, PO, or SOW, including but not limited to all intellectual property rights owned by Company therein, shall, at all times, remain the sole and exclusive property and assets of Company and/or its licensors (as applicable).
- 9.2 **Documentation, Software, and Firmware.** Notwithstanding any other provision, Company will keep all right, title, and interest in and to its respective Documentation, Software, and/or Firmware. Purchaser's use of Software and/or Firmware is governed exclusively by one of the following: (a) the Software License Agreement with Company; or (b) the license terms of the owner, if the owner is not Company; or (c) if not governed by a separate Software License Agreement, Company grants Purchaser a non-exclusive, royalty-free, and limited license solely (i) to use the Software only in conjunction with the Products and (ii) to use the Firmware solely as it is included in the Products. Company grants Purchaser a limited license solely (a) to make copies of the Documentation (with all copyright and/or other proprietary notices unchanged) as needed to install, operate, recalibrate, de-install, maintain, and/or repair the Products, and (b) for use in Purchaser's reasonable internal business purposes. Purchaser shall not disclose any of Company's Documentation to any third party and shall delete or destroy any copies of the Documentation when the Documentation is no longer used. Company may choose to supply Documentation by hard copy, download, or other suitable media or means. Company will supply third party documents only if such third-parties permit such disclosure.
- 9.3 **Developments.** Notwithstanding any other provision, unless otherwise agreed to in writing, Company shall own all right, title, and interest in and to any work product and/or developments made by Company in providing the Services or developing any Products for Purchaser, and Company hereby grants a limited, non-transferable license to use such work product and/or developments solely for the purposes contemplated through the intended use of the Products or as set forth in the Documentation.
- 9.4 **Confidential Information:** Each Party agrees not to disclose personal data or protected health information as defined by applicable privacy laws. Confidential Information shall be maintained in confidence and not disclosed, used, or duplicated, except as described under this subsection. Purchaser may use Confidential Information only in connection with performance under the Terms, the Contract, PO, or SOW. Confidential Information shall be returned to Company upon request. Company shall be entitled to terminate the Contract, PO, or SOW immediately; obtain injunctive relief or pursue other equitable relief for any violation of this subsection. This subsection does not apply to information that is: (a) in the public domain; (b) known to Purchaser at the time of disclosure; or (c) rightfully obtained by Purchaser on a non-confidential basis from a third party.
10. **Time and Indulgence**
- 10.1 The rights and remedies of Company under these Terms shall not be prejudiced or derogated from in any way by the failure of Company, whether on one or more occasions, to exercise any of said rights and remedies, or by its agreement, whether on one or more occasions, not to exercise any of said rights and remedies.
- 10.2 **Force Majeure.** Except for a Purchaser's obligation to pay invoices, neither party is liable for non-performance or delay due to unforeseen circumstances or causes beyond its reasonable control, including but not limited to Force Majeure Events.
11. **Tools and Materials**
- 11.1 All tools shall be and remain the property of Company, unless expressly agreed to in writing by Company and paid for by Purchaser.
- 11.2 Project material, if any, will be held by Company at Company's facility. In Company's request sole discretion, but no earlier than twelve (12) months of order inactivity, Purchaser may be asked whether Company should ship the project material to Purchaser or to scrap it. If no response from Purchaser is received within thirty (30) calendar days from the date of Company's request, then Company may scrap or dispose of the project material without any liability to Company. If Purchaser requests that the project material be shipped to Purchaser, shipping will be at the expense of Purchaser. Costs for all project materials are the responsibility of Purchaser.
- 11.3 For any project material returned to Purchaser, an additional administrative return and/or restocking fee may be required equal in value up to the initial cost or price of the project material, whichever is greater.
12. **Termination and Cancellations**
- 12.1 Company may terminate any SOW or PO without liability with or without cause by providing Purchaser with thirty (30) calendar days prior written notice. In the event of a material breach, the non-breaching party may terminate a Contract, PO, or SOW if the other party materially breaches any term of sale and fails to cure such breach within ten (10) Days after written notice of the breach. In the event of termination, Company shall invoice Purchaser, and Purchaser shall compensate Company for all Merchandise and any other work in process, including but not limited to time and materials, or in transit as of the date of termination and for all Services prorated through the date of termination.
- 12.2 **Termination for Default and/or Insolvency**
- 12.2.1 The non-breaching party (the "Injured Party") may terminate the Contract, PO, and/or SOW by written notice to the other (the "Defaulting Party") if an Insolvency Event or Default Event affects the Defaulting Party. Termination under this section will not affect other rights of the Injured Party.
- 12.2.2 A Default Event occurs if all the following conditions are met:
- (i) Defaulting Party breaches a material duty under the Contract, PO, or SOW;
 - (ii) Injured Party sends Defaulting Party a detailed written notice identifying the breach and the Defaulting Party has not cured the breach, within ten (10) Days of receipt of the breach notice; and
 - (iii) if the breach cannot reasonably be corrected within the ten (10) Days and Defaulting Party has not acted diligently to fix the breach during that time.
- 12.2.3 An Insolvency Event means any one or more of the following:
- (i) a meeting of creditors of Defaulting Party;
 - (ii) a proposal for an arrangement or composition with or for the benefit of creditors of Defaulting Party;
 - (iii) a trustee, chargeholder, creditor, receiver, administrative receiver, or similar person is appointed over or takes possession of material assets of Defaulting Party;
 - (iv) a legal enforcement process is taken (and not discharged within five (5) Days) against material assets of Defaulting Party;
 - (v) Defaulting Party stops trading or cannot pay its debts;
 - (vi) anyone gives notice of intention to appoint an administrator or trustee, in relation to Defaulting Party or its assets;
 - (vii) a petition is presented (and not discharged within twenty (20) Days) or a resolution is passed, or an order is made for winding-up, bankruptcy, or dissolution of Defaulting Party; or
 - (viii) an event similar to any Insolvency Event in a jurisdiction where Defaulting Party is incorporated or resides or carries on business or has assets.
- 12.2.4 On termination for Default and/or Insolvency, Purchaser will pay Company the price of Products, licensing fees, Documentation, and/or Services already delivered. If Company was the Injured Party, Purchaser also will pay Company for work in progress under Company's then-current policies and cancellation charges.
- 12.3 **Termination for Purchaser's Convenience.** Purchaser may end the Contract, PO, or SOW in whole or in part for its own convenience only with Company's written agreement.
13. **Non-Solicitation of Employees**
During the term hereof or under the Contract, PO, or SOW and for a period of one (1) year after the completion thereof, each party shall not, without the prior written consent of the other party, intentionally solicit for employment any Personnel of the other party who has been directly associated with these Terms. "Intentionally solicit" shall not include consideration of responses to advertising or job postings directed at the general public or of unsolicited resumes. The parties agree to inform their Personnel of the terms of this section. If a party violates the foregoing non-solicitation provision, it shall pay the other party, as liquidated damages and not as a penalty, an amount equal to one year's salary for the person hired in violation of this non-solicitation provision.
14. **Severability And Interpretation**
If any or any part of these Terms shall be determined to be invalid, unlawful, or unenforceable to any extent, such condition(s) or provision(s) shall be severed from the remaining conditions or provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law. Wherever appropriate in these Terms, words denoting the singular shall include the plural and vice versa. Headings and the like in these Terms are for reference purposes only and shall not affect in any way the meaning or interpretation of these Terms. The terms "or," "any," and "either" are not exclusive.
15. **Entire Agreement**
The Contract, or in the absence of a Contract, these Terms supersede all previous or existing agreements, negotiations, representations, and proposals, whether written, oral, express, or implied, on that subject matter.
16. **Compliance With Laws**
Purchaser shall comply with all applicable laws, regulations, and ordinances. Purchaser shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Purchaser shall comply with all export and import laws of all countries involved in the purchase or sale of Merchandise under this Agreement or any resale of the Merchandise by Purchaser. Purchaser assumes all responsibility for shipments of the Merchandise requiring any government import clearance. The Company may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Merchandise.
17. **Assignability**
Purchaser shall not assign any Contract, PO, or SOW any right, remedy, obligation, or liability arising hereunder or by reason hereof without the prior written consent of Company.
18. **Law Of Contract and Jurisdiction**
These Terms and any Contract, PO, and SOW (unless otherwise stated) are governed by and will be construed in accordance with the substantive and procedural laws of the State of Ohio, U.S.A., without regard to or application of any conflicts of law principles. Any suits, actions, and/or proceedings to enforce this Agreement shall only be brought and resolved in and by the Circuit Court of Summit County, Ohio, U.S.A., or the Eastern Division of the U.S. District Court for the Northern District of Ohio, U.S.A. To the extent permitted by law, Purchaser hereby irrevocably and unconditionally (a) consents and submits to the exclusive jurisdiction of such courts, (b) waives any immunity to service of process in respect of any such suit, action, and/or proceeding to which it might otherwise be entitled, and (c) waives any and all objections, claims, and defenses that such venue and forum is/are improper or inconvenient. The Parties agree to exclude any effect on that law of the 1980 United Nations' Convention on Contracts for the International Sale of Goods and, so far as legally possible, any rules which might apply the laws of another jurisdiction.