



## MOTIVAIR TERMS AND CONDITIONS OF SALE

“**Company**” shall mean Motivair LLC.

“**Customer**” shall mean the legal entity purchasing Equipment or Services (as those terms are defined below) from Company. Company and Customer are also hereafter sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.

“**Affiliate(s)**” shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with a Party hereto, where “control” means the ownership of more than fifty percent (50%) of the voting rights or income interest in a company or other business entity or such other relationship as, in fact, constitutes actual control.

1. **Contract Terms.** These Motivair Terms and Conditions of Sale (“**Terms and Conditions**”) shall apply to any purchase or procurement of any equipment, including any equipment which may contain embedded software, or other products (“**Equipment**”) and/or any services (“**Services**”) by Customer from Company. To the extent that there is a conflict between these Terms and Conditions and a valid, negotiated and signed master agreement between Customer and Company (“**Agreement**”), the specific conflicting terms of such Agreement shall prevail unless otherwise provided for in such Agreement. To the extent that there is a conflict between these Terms and Conditions and another set of Company terms and conditions issued to Customer as part of the proposal or quotation process (“**Proposal**”), the specific conflicting terms of such Proposal document shall prevail. Any other variation from these Terms and Conditions shall require the signed written consent of an authorized Company representative. Any purchase order or statement of work (“**Purchase Order**”) or other communication or document from Customer that contains terms and conditions in addition to, or inconsistent or in conflict with, these Terms and Conditions are hereby rejected and shall not be binding upon Company, unless Company expressly agrees to and accepts such terms and conditions in writing; and neither Company’s acceptance of a Purchase Order nor Company’s failure to object to such terms and conditions contained in any Purchase Order or other communication or document from Customer shall be construed as a waiver of these Terms and Conditions or an acceptance by Company of any such terms and conditions. Customer’s signature below shall constitute Customer’s acceptance of these Terms and Conditions and shall bind Customer to these Terms and Conditions. In any event, Customer’s submission of a Purchase Order to Company for any Equipment and/or Services shall be subject to these Terms and Conditions, and any additional or conflicting terms and conditions contained or referenced in such Purchase Order are hereby expressly rejected by Company and superseded by these Terms and Conditions. Any shipment of Equipment or performance of Services shall only be undertaken by Company under these Terms and Conditions or, as applicable, the Agreement.

2. **Title and Risk of Loss.** Unless otherwise specifically agreed upon by the Parties, all Equipment is delivered FCA (Incoterms 2020) Company’s U.S. manufacturing facility or warehouse, and the risk of loss or damage to the Equipment shall pass to Customer upon tender of delivery of such Equipment to carrier at Company’s U.S. manufacturing facility or warehouse. Title to all Equipment (except for software embedded in such Equipment, if any, title of which remains at all times with Company or its third party licensor, and is licensed to Customer as provided herein) shall pass to Customer upon full payment of such Equipment.

3. **Pricing and Taxes.** Unless otherwise stated in an applicable Proposal, all prices are subject to change by Company without notice. Following acceptance of a Purchase Order by Company, and without addition of any other terms and condition of sale or any other modification by Customer, the prices stated are firm provided that notification of release for immediate production and shipment is received at Company’s factory not later than two months from Purchase Order acceptance. If such release is received later than two months from Purchase Order acceptance date, prices will be increased a straight 2% (not compounded) for each one-month period (or part thereof) beyond the two-month firm price period up to the date of receipt of such release. If such release is not received within six months after the date of Purchase Order acceptance, the prices are subject to renegotiation or, at Company’s option, the Purchase Order will be canceled. Any delay in shipment caused by Customer’s actions will subject prices to increase equal to the percentage increase in list prices during that period of delay and Company may charge Customer with incurred storage fees. In no event will prices be decreased. The price of Equipment does not include any present or future foreign, federal, state, or local property, license, privilege, sales, use, revenue, ad valorem, excise, value added, harmonized sales, import, export, tariffs, duties, gross receipts, withholding, or other like taxes, assessments or governmental levies. Such amounts, if any, will be itemized separately to Customer, and Customer will make prompt payment to Company. Company will accept valid resale & exemption documentation for such from Customer, if applicable. All prices include packaging in accordance with Company’s standard procedures. Charges for special packaging, crating, or packing are the responsibility of Customer.

4. **Delivery and Delays.** Delivery dates are approximate and not guaranteed. Dates for delivery, schedule, or execution



for the Equipment or Service set out on a Purchase Order are subject to confirmation by Company and until such confirmation may change solely based on Company's circumstances. All confirmed dates are based on the prompt receipt by Company of all required information enabling achievement of such dates and Company reserves the right to change such dates in the event additional information is necessary or other information was not provided. Customer hereby acknowledges that considerable detail is involved in the manufacture of the Equipment. To facilitate timely shipment, complete details and information, including Customer's requested on-site dates must be provided at the time of Purchase Order entry. Shipment dates are approximate and are based upon timely receipt of all necessary information from Customer. Lack of complete information may result in changes to the approximate shipment dates and may also include delays of drawings, delivery or manufacture. Such delays shall relieve Company from compliance with the quoted approximate delivery dates and may lead to a price increase. Failure to provide a complete signed Purchase Order within twenty (20) days of notification of award may result in renegotiation of price or shipment dates. Company will use commercially reasonable efforts to deliver the Equipment on or before the estimated delivery date, will notify Customer if the estimated delivery dates cannot be honored, and will deliver the Equipment and Services as soon as reasonably practicable thereafter. Company reserves the right to make shipments in installments, unless otherwise expressly stipulated in a specific Purchase Order; and all such installments when separately invoiced shall be paid for when due per invoice without regard to subsequent shipments. Delay in shipment of any installment shall not relieve Customer of its obligations to pay for such shipment or to accept remaining shipments. Notwithstanding anything herein to the contrary, in no event will Company be liable for any damages or expenses caused by delays in delivery.

**5. Performance.** Any Proposal shall be valid for no more than thirty (30) days from the date that the Proposal is communicated from Company to Customer, unless otherwise stated in the Proposal. All Proposals are subject to change by Company at any time upon notice to Customer. Proposals are made based on Company's interpretation of the plans and specifications submitted to Company by Customer. It is Customer's obligation to review the Proposal carefully and to immediately advise Company of any differing interpretation Customer has so any necessary change can be made prior to issuance of a Purchase Order by Customer. Company shall be obligated to furnish only the Equipment described in the Proposal and in submittal data (if such data is issued in connection with the Purchase Order). Company may rely on Customer's acceptance of the Proposal and submittal data as acceptance of the suitability of the Equipment for the particular project or location. Unless specifically stated in the Proposal, compliance with any local building codes or other laws, ordinances, rules or regulations relating to specifications or the location, use or operation of the Equipment is the sole responsibility of Customer. If Equipment is tendered that does not fully conform with the provisions of a Proposal and these Terms and Conditions, and such Equipment is rejected by Customer, Company will have the right to cure such nonconformity within a reasonable time after Company's receipt of written notice thereof from Customer by substituting a conforming tender of Equipment whether or not the time for performance has passed.

**6. Force Majeure.** Company shall be excused from and not be liable for any delay or non-performance of a Purchase Order if such delay or non-performance is due, in whole or in part, to any Force Majeure Event. Any delay resulting from a Force Majeure Event shall extend the date of delivery or performance by the duration of such Force Majeure Event and the price will be adjusted to compensate Company for the delay. Company reserves the right to cancel a Purchase Order without liability to Customer, if in Company's opinion such Force Majeure Event threatens or causes an extended delay in the performance thereof. In no event shall Company be subject to any liability including, without limitation, any delay penalties, liquidated damages, or any other damages, penalties, costs, expenses or other liabilities, or termination for default, as a result of any Force Majeure Event under this section.

A "Force Majeure Event" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, a "Force Majeure Event" includes, but is not limited to, any of the following: epidemic, pandemic, or public health emergency; war, revolution, insurrection or hostilities (whether declared or not), terrorism, riot, economic upheaval, civil disobedience, commotion or uprising; acts of God, flood, earthquake, tempest, hurricane, lightning or other natural disaster; fire or explosion; strike, lockout, boycott or other industrial disturbance whether at Company or one of its suppliers; sabotage; cyber-attack; accident; car shortage, wrecks or delays in transportation; non-delivery, unavailability or shortages of materials, parts or components; embargo or order or other action of any government or governmental authority; or any other event, circumstance or cause beyond the reasonable control of Company, or which Company could not reasonably foresee or reasonably provide against.

**7. Limited Warranty, Exclusions and Disclaimer.** (a) Limited Warranty. Company warrants the Equipment manufactured by Company and purchased by Customer as follows: Company warrants the Equipment to be free from defects in material and workmanship under normal use of such Equipment for a period of either 14 months from date of delivery of such Equipment to the carrier at Company's factory, or 12 months from start-up of such Equipment, whichever is earlier. The foregoing warranty coverage is contingent on Customer providing prompt written notification to Company



once any such defect is reasonably apparent to Customer. If Company receives written notification from Customer of any such defect during the warranty period, the sole and exclusive obligation of Company, and Customer's sole and exclusive remedy, will be for Company, at its sole option, to repair or replace without cost to the Customer any defective part, assembly, or portion of the affected Equipment thereof, which shall be returned to Company's factory, transportation charges prepaid, and which Company's inspection shall confirm to be defective. This warranty is provided solely to Customer, and it is not transferable and does not extend to any third party. This warranty does not include reimbursement for labor, material, removal, installation, transportation, temporary power, or any other costs or expenses that may be incurred in connection with the repair or replacement of parts or components.

No warranty liability whatsoever shall attach to Company until Customer's complete Purchase Order for the affected Equipment has been paid for in full, and Company's total liability under this warranty shall be limited to, and shall in no event exceed, the purchase price of the Equipment shown to be defective.

Company also offers additional parts warranty and Services plans which may be made available to Customer for additional fees and subject to additional terms and conditions.

(b) Returns. Equipment returns are not accepted. Spare parts may not be returned without first obtaining Company's written permission and shall be assessed a restocking fee.

(c) Warranty Exclusions. The foregoing express limited warranty does not apply to:

- 1) any Equipment, material or parts not manufactured by Company. Equipment, material or parts that are not manufactured by Company are not warranted by Company, and the warranty obligations of Company regarding such Equipment, material or parts shall in all respects conform and be limited to only such warranties as may be actually extended to Company by the respective manufacturer, if any.
- 2) any Equipment that includes required start-up, if the start-up is performed by anyone other than Company, an Affiliate of Company, or a Company-approved service partner.
- 3) any Equipment (or any parts or components thereof) which has been altered, abused, vandalized, tampered with, misused, mishandled, or damaged by accident or negligence.
- 4) any Equipment which has been subjected to adverse weather or environmental conditions, or to unusual physical, electrical, or mechanical stress.
- 5) any operation of the Equipment with any accessory, equipment or part not specifically approved by Company, or any refrigerant not supplied by Company; Company shall not be obligated to pay for the cost of lost refrigerant or lost product.
- 6) any defects resulting from a lack of proper maintenance for the Equipment as recommended by Company.
- 7) any defects resulting from the use of unapproved water treatment or cleaning solutions, as described in the Equipment documentation.
- 8) any defects resulting from the improper use or installation, loading, unloading, handling, or storage of the Equipment, or any parts or components thereof, by Customer or anyone else outside of Company's control.
- 9) any defects caused by maintenance, repair or servicing of the Equipment by anyone other than Company or a Company-authorized agency.
- 10) any defects resulting from improper modifications made to the Equipment by Customer or any third party.
- 11) any damage or loss related to a liquid release of any kind regardless of cause.
- 12) normal wear and tear of the Equipment, or to any use of the Equipment in a manner that is beyond normal use or not in compliance with the operating manual or other Company documentation for such Equipment.
- 13) any defects due to Company's conformance with any specifications, designs, plans or any other materials provided by Customer.

(d) WARRANTY DISCLAIMER. EXCEPT FOR COMPANY'S WARRANTY EXPRESSLY SET FORTH HEREIN, COMPANY DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES, CONCERNING ITS EQUIPMENT OR OTHER PRODUCTS, AND ITS SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF DESIGN,



**NON-INFRINGEMENT, MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR USE, OR OTHERS THAT ARE ALLEGED TO ARISE FROM COURSE OF DEALING OR TRADE. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION ABOVE, CUSTOMER IS PURCHASING, AND COMPANY IS SELLING, THE EQUIPMENT AND SERVICES ON AN "AS-IS, WHERE-IS", "WITH ALL FAULTS" BASIS.**

**COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING PREVENTION OF MOLD, FUNGUS, BACTERIA, MICROBIALGROWTH, OR ANY OTHER CONTAMINATES.**

**COMPANY MAKES NO WARRANTY THAT THE EQUIPMENT OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT CUSTOMER'S USE OF THE EQUIPMENT OR SERVICES WILL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. COMPANY DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT THE EQUIPMENT OR SERVICES WILL BE SECURE OR FREE FROM VULNERABILITIES, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSIONS OR CYBER THREATS OR THAT THE EQUIPMENT WILL OPERATE IN COMBINATIONS OTHER THAN AS SPECIFIED AND APPROVED BY COMPANY, AND COMPANY HEREBY DISCLAIMS ANY LIABILITY IN RELATION THERETO. EXCEPT AS MAY BE PROVIDED IN WRITING BY COMPANY, COMPANY SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES WHATSOEVER THAN AS STATED ABOVE WITH REGARD TO THE EQUIPMENT AND SERVICES SOLD BY COMPANY TO CUSTOMER. BY USING THE EQUIPMENT OR SERVICES, CUSTOMER UNDERSTANDS THESE LIMITATIONS AND HEREBY AGREES THAT CUSTOMER ACCESSES AND USES THE EQUIPMENT AND SERVICES AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO CUSTOMER'S SYSTEMS OR ASSETS OR LOSSES THAT ARISE FROM OR RELATE TO SUCH ACCESS OR USE.**

**8. Indemnity.** Customer hereby agrees to indemnify, defend, and hold harmless Company from and against any and all claims, damages, liabilities, deficiencies, settlements, interests, awards, penalties, fines, costs, expenses, judgments, losses, lawsuits, demands, actions, or other proceedings of whatever kind, including reasonable attorneys' fees, the costs of enforcing any right to indemnification under these Terms and Conditions and the cost of pursuing any insurance providers (collectively, "**Losses**"), due to, arising out of, or related to (a) Customer's use of the Equipment or Services in a manner not permitted by these Terms and Conditions, the Purchase Order or the Agreement, as applicable, (b) Customer's failure to comply with Section 19 of these Terms and Conditions, including Customer's failure maintain a Security Program in compliance with Section 19 or Customer's failure to promptly and properly install Updates and Patches for the Equipment or Services in accordance with Section 19, (c) Customer's violation of these Terms and Conditions, the Purchase Order or the Agreement, as applicable, (d) any information that Customer submits, transmits, or makes available to Company, including but not limited to as part of the Feedback, or (e) Customer's violation of any law, regulation, or third party rights. Without limiting the foregoing, Customer shall pay any and all costs, damages, and expenses, including, without limitation, reasonable attorneys' fees and costs awarded against or otherwise incurred by Company in connection with or arising from any claim, lawsuit, action, demand, or other proceeding for which Company is indemnified by Customer under these Terms and Conditions. Company may assume the exclusive defense and control of any matter subject to indemnification by Customer, in which event Customer hereby agrees to cooperate with Company in asserting any available defenses. Customer shall not enter into a settlement of any such claim, lawsuit, action, demand, or other proceeding that does not include a full release of Company or involves a remedy other than the payment of money, without Company's prior written consent.

**9. Software.** Any software or computer information, in whatever form, that is embedded in the Equipment or provided as part of the Services is licensed to Customer on a limited, non-exclusive, non-transferable basis in object code format only, for Customer's own use in the operation of the Equipment, and solely pursuant to standard licenses of Company or its supplier, which licenses are hereby incorporated into these Terms and Conditions by reference and are available upon request. Customer shall not reverse engineer, decompile, disassemble or apply any process, technique, or procedure or make any attempt to ascertain or derive the source code of such software in the Equipment or Services.

**10. Customer Breach.** Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies and in Company's sole discretion, to terminate any Purchase Order, require payment prior to shipping, or suspend performance, by delivery of written notice to Customer: (1) Any failure by Customer to pay any amounts when due; (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with these



Terms and Conditions is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of these Terms and Conditions. Customer shall be liable to the Company for all Equipment furnished and all damages and other Losses sustained by Company (including, but not limited to, lost profit and overhead) as a result of such breach.

**11. Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS TO THE CONTRARY, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL: (A) COMPANY OR COMPANY'S OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR ANY FORM OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, REFRIGERANT LOSS, BUSINESS INTERRUPTION, LOST DATA OR BUSINESS INFORMATION, LOST REVENUE, LOST PROFITS, OR LOSS OF USE) EVEN IF COMPANY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION OR SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY; (B) THE MAXIMUM LIABILITY OF COMPANY WITH RESPECT TO ANY CLAIM ARISING FROM OR RELATED TO ANY EQUIPMENT OR SERVICES PROVIDED TO CUSTOMER SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO COMPANY UNDER THE PURCHASE ORDER FOR THE EQUIPMENT OR SERVICES GIVING RISE TO SUCH CLAIM.

**12. Nuclear Liability.** In the event that the Equipment sold hereunder is to be used in a nuclear facility, Customer will, prior to such use, arrange for insurance and/or governmental indemnity protecting Company against any and all liability and other Losses (including reasonable attorneys' fees), in a form and manner reasonably acceptable to Company. To the maximum extent permitted by applicable law, Customer hereby releases and agrees to indemnify and hold Company and its suppliers harmless from and against any and all nuclear damage, including loss of use and all other Losses, in any manner arising out of, resulting from or related to a nuclear incident, regardless of whether alleged to be due, in whole or in part, to the negligence or otherwise of Company or its suppliers. Customer hereby agrees that the Equipment will not be used either directly or indirectly in any missiles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons, which may include but are not limited to chemical, biological or nuclear weapons, or for any other prohibited end-use or end user unless authorized under International Trade Controls (as defined in the "Export Laws" section below).

**13. Intellectual Property; Patent Indemnity.** Company hereby retains all ownership of all right, title and interest in and to the intellectual property (including, but not limited to, the right to license and other rights to all patents, trademarks, copyrights, trade secrets and other intellectual property rights) arising from or related to the Equipment and any work product arising from or related to such Equipment, and, except for the limited right to use the Equipment sold by Company to Customer as provided in these Terms and Conditions, Customer obtains no rights in or to any such intellectual property. Nothing in these Terms and Conditions constitutes a transfer or conveyance of any right, title or interest in such intellectual property, including without limitation any embedded software contained in the Equipment, except the limited right for Customer to use it as provided in the Equipment documentation. Subject to the other terms and conditions of these Terms and Conditions, Company agrees to defend, with counsel of its choice, any suit or proceeding brought against Customer by a third party which is solely based upon a claim that the Equipment, as provided by Company to Customer and used in accordance with the Equipment documentation provided by Company and these Terms and Conditions, constitutes infringement of any patent of the United States of America, provided Company is promptly notified in writing and given sole authority and control, necessary information, and assistance by Customer for defense of same. This obligation shall be effective only if Customer shall have made all payments to Company then due with regard to the applicable Equipment. In the event that the use of such Equipment by Customer is enjoined in such a suit or proceeding, Company will, at its sole option, procure for Customer the right to continue to use said Equipment, or modify such Equipment so that it becomes non-infringing, or replace such Equipment with non-infringing Equipment, or remove said Equipment and refund the purchase price for such Equipment. Company shall in no event be responsible for any compromise or settlement of any such suit or proceeding made without Company's prior written consent. Notwithstanding anything in these Terms and Conditions to the contrary, nothing herein shall in any way be construed to include any agreement by Company to accept any liability whatsoever, or any obligation to defend Customer, in respect to patents for inventions including more than the Equipment furnished hereunder, or in respect of patents for methods and processes to be carried out with the aid of said Equipment. The provision of Equipment by Company to Customer does not convey any license, by implication, estoppel, or otherwise, under patent claims covering combinations of said Equipment with other devices, systems or elements, or for a use in a design in which the Equipment is incorporated. In no event shall Company be liable if any infringement or misappropriation claim, charge, suit or proceeding is based on the use of the Equipment for a purpose other than that for which it was sold by Company to Customer. The foregoing states the entire liability of Company with regard to patent infringement. Notwithstanding the provisions of this paragraph, Customer shall indemnify



and hold Company harmless against any and all Losses (including reasonable attorneys' fees), to the extent resulting from infringement of patents or trademarks arising from, or based upon, Company's compliance with Customer's designs, plans, specifications or instructions.

**14. Cancellation.** Equipment is specially manufactured in response to accepted Purchase Orders. A Purchase Order placed with and accepted by Company cannot be delayed, canceled, suspended, or extended except with Company's written consent and upon written terms accepted by Company that will reimburse Company for, and indemnify Company against, loss and provide Company with a reasonable profit for its materials, time, labor, services, use of facilities and otherwise. Customer will be obligated to accept any Equipment shipped, tendered for delivery, or delivered by Company pursuant to the Purchase Order prior to any agreed delay, cancellation, suspension, or extension of the Purchase Order. Any attempt by Customer to unilaterally revoke, delay or suspend acceptance for any reason whatever after it has agreed to delivery of or accepted any shipment shall constitute a breach of these Terms and Conditions. For purposes of this section, acceptance occurs by any waiver of inspection, use or possession of Equipment, payment of the invoice, or any indication of exclusive control exercised by Customer.

**15. Invoicing and Payment.** Equipment shall be invoiced to Customer upon tender of delivery thereof to the carrier. Customer shall pay Company's invoices within net 30 days from the date of invoice. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these Terms and Conditions. Acceptance of any Purchase Order is subject to credit approval by Company and Customer meeting Company's credit standards. Upon disapproval of credit, Company may delay or suspend performance or, at Company's option, renegotiate prices and/or terms and conditions with Customer. Company may at any time decline to ship, make delivery, or perform work except upon receipt of cash payment, letter of credit, or security, or upon other terms and conditions satisfactory to Company. Customer hereby agrees that, unless Customer makes payment in advance, Company will have a purchase money security interest in all Equipment to secure payment in full of all amounts due Company and the Purchase Order for the Equipment, together with these Terms and Conditions, form a security agreement (as defined by the UCC in the United States and as defined in the Personal Property Security Act in Canada). Customer shall keep the Equipment free and clear of all taxes and encumbrances, shall not remove the Equipment from its original installation point and shall not assign or transfer any interest in the Equipment until all payments due Company have been made. The purchase money security interest granted herein attaches upon Company's acceptance of Customer's Purchase Order and on receipt of the Equipment described in the accepted Proposal but prior to its installation. The Parties have no agreement to postpone the time for attachment unless specifically noted in writing on the accepted Purchase Order. Customer will have no rights of set off against any amounts, which become payable to Company under these Terms and Conditions or otherwise. If requested, Company will provide appropriate lien waivers upon receipt of payment.

**16. Claims.** Company will consider claims for concealed shortages in shipments or rejections due to failure to conform to a Purchase Order only if such claims or rejections are made in writing within 15 days of delivery and are accompanied by the packing list and, if applicable, the reasons in detail why the Equipment does not conform to Customer's Purchase Order. Notwithstanding anything herein to the contrary, failure to provide such claim within the above time period shall constitute unqualified acceptance of such Equipment and a waiver of all such claims by Customer. Upon receiving authorization and shipping instructions from authorized personnel of Company, Customer may return rejected Equipment, transportation charges prepaid, for replacement. Company may charge Customer any costs resulting from the testing, handling, and disposition of any Equipment returned by Customer which are not found by Company to be nonconforming. All Equipment damaged during shipment and all claims relating thereto must be made with the freight carrier in accordance with such carrier's policies and procedures. Claims for Equipment damaged during shipment are not covered under the warranty provision stated herein.

**17. Changes.** Customer may request changes that affect the scope, duration, or delivery schedule (including Customer's rescheduling of a shipment) of a Purchase Order, including changes in the specifications and Equipment or Services to be delivered, that goes into effect after the date of the original Purchase Order. If Customer requests any such change, Company shall provide a quotation as to revised price and schedule. Pricing of changes shall be based on the then current Company prices. Notwithstanding anything in these Terms and Conditions to the contrary, Company shall not be bound by or required to agree to any change requested by Customer. In the event Company agrees to a change requested by Customer, the Parties will enter into an amendment to the Purchase Order in the form of a change order reflecting such agreement. A change order shall not modify any provisions of these Terms and Conditions unless the Parties agree in writing to do so. Changes to the Purchase Order cannot be processed until a formal signed change order



is received from Customer. Any changes to the Purchase Order may result in an extension of time for shipment. All changes will be mutually agreed upon by the Parties, prior to implementation of any change.

Company will issue a Proposal with a price increase for any change requested by Customer that affects modification of Equipment, changes the bills of material, engineering or drawings or delivery schedule as follows: (i) if Customer makes a change to a Purchase Order prior to being released to engineering, the net price will be adjusted by re-pricing the Equipment with prices in effect at the time of the change. A commensurate delay in the shipping date will be based on the changes involved; (ii) for changes made after the Purchase Order is released to engineering, the net price and ship date will be adjusted as described in part (i) above. An additional charge based on Company's standard engineering billing charges and cost of parts (\$250 minimum) will be made to cover any extra engineering and drafting, scrap or rework of parts, or cost of modification; (iii) if during the drawing approval process, Customer makes changes outside the design covered by the specifications, Company will be reimbursed as described in parts (i) and (ii) above, plus any additional charges for any extra cost incurred as a direct result of the changes and allowed a commensurate delay in shipping date based on the changes involved.

**18. Export Laws.** The obligation of Company to supply Equipment under these Terms and Conditions is subject to the ability of Company to supply such Equipment in accordance with applicable laws and regulations of the United States and other applicable governments. Company reserves the right to refuse to accept or perform any Purchase Order, and to cancel any Purchase Order, under these Terms and Conditions if Company in its sole discretion determines that performance of the transaction to which such Purchase Order relates would violate any such applicable law or regulation. Customer will pay all handling and other similar costs from Company's factories including the costs of freight, insurance, export clearances, import duties and taxes. Customer will be "exporter of record" with respect to any export from the United States of America and will perform all compliance and logistics functions in connection therewith and will also comply with all applicable laws, rules, and regulations. Customer understands that Company and/or the Equipment are subject to laws and regulations of the United States of America which may require licensing or authorization for and/or prohibit export, re-export, or diversion of Company's Equipment to certain countries, and Customer hereby agrees it will not knowingly assist or participate in any such diversion or other violation of applicable United States of America laws and regulations.

Company is subject to the laws of, and the Equipment provided by Company under these Terms and Conditions contain or may contain components and/or technologies from, the United States of America ("US"), the European Union ("EU") or other nations. Customer hereby acknowledges and agrees that the supply, assignment and/or usage of the Equipment, software, Services, information, other items and/or the embedded technologies (hereinafter collectively referred to as "**Deliverables**"), and all activities carried out under these Terms and Conditions, the Purchase Order and/or Agreement, as the case may be, shall fully comply with applicable trade, export control, economic and financial sanctions and anti-boycott requirements imposed, administered or enforced from time to time by the US, the United Kingdom, the EU, and other applicable jurisdictions (hereinafter referred to as "**International Trade Controls**").

Unless applicable International Trade Controls authorizations have been obtained from the relevant governmental authorities and Company has approved such actions in writing, Customer shall not, directly or indirectly, (a) transact on Company's behalf with any party (which may include but shall not be limited to an individual, group and/or legal entity or entities) that is restricted by applicable International Trade Controls, or (b) export and/or re-export any Deliverables to any destination or party (which may include but shall not be limited to an individual, group and/or legal entity or entities) that is restricted by the applicable International Trade Controls; or (c) use any Deliverables for those purposes and fields that are restricted by the applicable International Trade Controls. Customer also hereby agrees that the Deliverables will not be used either directly or indirectly in any missiles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons, which may include but are not limited to chemical, biological or nuclear weapons, or for any other prohibited end-use or end user unless authorized under International Trade Controls.

Customer hereby represents and warrants that it shall maintain reasonable compliance policies, procedures and controls designed to ensure compliance with International Trade Controls, and shall not otherwise undertake any action that violates or would cause Company to violate International Trade Controls.

Customer hereby agrees to fully cooperate and provide all documentation that Company identifies as necessary or advisable to support compliance with International Trade Controls. If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the International Trade Controls would prohibit Company from fulfilling any Purchase Order, or would in Company's judgment otherwise expose Company to a risk of



liability under the applicable International Trade Controls if it fulfilled the Purchase Order, Company shall be excused from all obligations under such Purchase Order, these Terms and Conditions and/or the Agreement.

Customer hereby agrees to hold harmless and indemnify Company for any and all damages and other Losses resulting to Customer or Company, or suffered or incurred by Company, from a breach of this section by Customer.

Diversion of the Deliverables covered in these Terms and Conditions to Russia is strictly prohibited as defined. Regulation (EU) No 833/2014.

#### 19. Customer's Cybersecurity Obligations.

Customer's Obligations for Its Systems: Customer is solely responsible for the implementation and maintenance of a comprehensive security program ("**Security Program**") that contains reasonable and appropriate security measures and safeguards to protect its computer network, systems, machines, and data (collectively, "**Systems**"), including those Systems on which it runs the Equipment or which it uses with the Services, against Cyber Threats. "**Cyber Threat**" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt Customer's Systems or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of Customer's Systems, including any data, including through malware, hacking, or similar attacks.

Without limiting the foregoing, Customer shall at a minimum:

- (a) have qualified and experienced personnel with appropriate expertise in cybersecurity maintain Customer's Security Program, and have such personnel regularly monitor cyber intelligence feeds and security advisories applicable to Customer's Systems or Customer's industry;
- (b) promptly update or patch its Systems or implement other appropriate measures based on any reported Cyber Threats and in compliance with any security notifications or bulletins, whether publicly disclosed on Company's security notification webpage at <https://www.se.com/ww/en/work/support/cybersecurity/security-notifications.jsp> or otherwise provided to Customer;
- (c) regularly monitor its Systems for possible Cyber Threats;
- (d) regularly conduct vulnerability scanning, penetration testing, intrusion scanning, and other cybersecurity testing on its Systems; and
- (e) meet the recommendations of Company's Recommended Cybersecurity Best Practices, available at <https://www.se.com/us/en/download/document/7EN52-0390/>, as may be updated by Company from time to time, and then-current industry standards.

Customer's Use of the Equipment and Services: Company may release Updates and Patches for its Equipment and Services from time to time. Customer shall promptly install any Updates and Patches for such Equipment or Services as soon as they are available in accordance with Company's installation instructions and using the latest version of the Equipment, where applicable. An "**Update**" means any software that contains a correction of errors in an Equipment or Services and/or minor enhancements or improvements for an Equipment or Services, but does not contain significant new features. A "**Patch**" is an Update that fixes a vulnerability in an Equipment or Services. Customer understands that failing to promptly and properly install Updates or Patches for the Equipment or Services may result in the Equipment or Services or Customer's Systems becoming vulnerable to certain Cyber Threats or result in impaired functionality, and Company shall not be liable or responsible for any losses or damages that may result.

Identification of Cyber Threats: If Customer identifies or otherwise becomes aware of any vulnerabilities or other Cyber Threats relating to the Equipment or Services for which Company has not released a Patch, Customer shall promptly notify Company of such vulnerability or other Cyber Threat(s) via the Company Report a Vulnerability page (<https://www.se.com/ww/en/work/support/cybersecurity/report-a-vulnerability.jsp#Customers>) and further provide Company with any reasonably requested information relating to such vulnerability (collectively, "**Feedback**"). Company shall have a non-exclusive, royalty-free, perpetual and irrevocable right to use, display, reproduce, modify, and distribute the Feedback (including any confidential information or intellectual property contained therein) in whole or part, including to analyze and fix the vulnerability, to create Patches or Updates for its customers, and to otherwise modify its Equipment or Services, in any manner without restrictions, and without any obligation of attribution or compensation to Customer; provided, however, Company shall not publicly disclose Customer's name in connection with such use or the Feedback (unless Customer consents otherwise). By submitting Feedback, Customer represents and warrants to Company that Customer has all necessary rights in and to such Feedback and all information it contains, including to grant the rights to



Company described herein, and that such Feedback does not infringe any proprietary or other rights of third parties or contain any unlawful information.

**20. Confidentiality.** “**Confidential Information**” shall mean all nonpublic, confidential, or proprietary information and other materials that one Party discloses or otherwise makes available, orally or in writing, to the other Party hereto including, but not limited to, all information concerning the disclosing Party’s business operations, processes, procedures, methods, techniques, protocols, plans, strategies, formulas, programs, devices, trade secrets, “know-how”, inventions, ideas, concepts, research and development, products (both current and future), technology and technical information, specifications, designs, drawings, configurations, prototypes, samples, data, reports, studies, testing, results, analysis, financial and business information, marketing and sales information, market research, pricing information, customers and customer lists, suppliers and sources of supply, materials, documentation and other nonpublic, confidential or proprietary information which are marked or otherwise identified as confidential, or which are of such a nature that the receiving Party knows, or should reasonably know under the circumstances, that such information is and should be treated as confidential. Each Party hereto shall retain ownership of its Confidential Information, and nothing herein shall be construed as granting or conferring any right, title or interest, or any license, in any of the other Party’s Confidential Information. Any Confidential Information disclosed by the disclosing Party to the receiving Party hereunder, if any, is disclosed “AS IS” and without warranty of any kind.

Confidential Information shall not include information which (i) was already known to the receiving Party or in the receiving Party’s lawful possession prior to disclosure, (ii) is or becomes publicly available through no fault of the receiving Party, (iii) is provided to the receiving Party on a non-confidential basis by a third party who, to the receiving Party’s knowledge, was not bound by any confidentiality obligations with respect to the disclosed information, or (iv) is independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information.

The receiving Party shall (a) keep the disclosing Party’s Confidential Information strictly confidential and protect such Confidential Information using the same degree of care that the receiving Party protects its own Confidential Information, which in no event shall be less than a reasonable degree of care, (b) use the disclosing Party’s Confidential Information only for the purpose of the receiving Party’s performance in connection with the applicable Proposal or Purchase Order, and the specific Equipment and/or Services thereunder, and for no other purpose whatsoever without the prior written consent of the disclosing Party, (c) limit disclosure of the disclosing Party’s Confidential Information to only those employees, Affiliates, contractors and agents of the receiving Party who need to know for the purpose stated above and who are bound to maintain the confidentiality of such Confidential Information, and shall not disclose the disclosing Party’s Confidential Information to any third party without the prior written consent of the disclosing Party.

If the receiving Party is required by a court order or governmental authority to disclose any of the disclosing Party’s Confidential Information, then the receiving Party shall provide the disclosing Party with prompt written notice of such requirement, along with a written copy thereof, so that disclosing Party may seek a protective order or other appropriate remedy. In the event that the receiving Party is ultimately obligated to disclose such Confidential Information as required by such court order or governmental authority, then the receiving Party shall disclose only that portion of the disclosing Party’s Confidential Information which is legally required, and the receiving Party shall otherwise continue to protect the disclosing Party’s Confidential Information as set forth herein.

Upon the written request of the disclosing Party, all Confidential Information of the disclosing Party which is in the receiving Party’s possession, including any copies thereof, shall, at the disclosing Party’s written instruction, either be returned to the disclosing Party, or destroyed and a certificate of destruction shall be promptly provided by the receiving Party to the disclosing Party. Notwithstanding the foregoing, the receiving Party may retain a copy of the disclosing Party’s Confidential Information strictly for backup and archival purposes.

The confidentiality obligations imposed upon the receiving Party hereunder shall remain in effect for a period of five (5) years after the date of the applicable Proposal or Purchase Order (with the exception of any of the disclosing Party’s Confidential Information which constitutes a trade secret under applicable law, in which case the confidentiality obligations of the receiving Party hereunder shall remain in effect for that portion of such Confidential Information for as long as such trade secret status continues to exist).

**21. Nature of Relationship.** Customer agrees that Company is an independent contractor and nothing in these Terms and Conditions creates between Company and Customer a relationship of partners, joint venturers, or agents of each other, and neither Party may so represent itself in any of these manners with respect to the other Party.

**22. General.** (a) Governing Law. Except as provided below, to the maximum extent provided by law, these Terms and Conditions, and the Purchase Order, as well as all matters arising out of or relating to the execution, construction,



interpretation or breach of the Purchase Order or these Terms and Conditions, shall be governed by, interpreted and enforced in accordance with the laws of the state of New York, without regard to its conflict of law principles or provisions thereof. The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms and Conditions or any Purchase Order. Any action or suit arising out of or related to these Terms and Conditions must be commenced within one year after the cause of action has accrued.

To the extent the Equipment is being used at a site owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government.

(b) Entire Agreement. These Terms and Conditions contain all the agreements, representations and understandings of the Parties and supersede all previous understandings, commitments, or agreements, oral or written, related to the subject matter hereof. These Terms and Conditions may not be amended, modified, or terminated (other than as expressly provided in these Terms and Conditions) except by a writing signed by the respective authorized representatives of the Parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon.

(c) Severability. If any term or condition of these Terms and Conditions is invalid, illegal, or incapable of being enforced by any rule of law, all other terms and conditions of these Terms and Conditions will nevertheless remain in full force and effect, and such invalid, illegal or unenforceable term or condition shall be modified to the extent possible in such a manner as to be valid, legal and enforceable and also in a way that most closely carries out the original intent of such term or condition.

(d) Assignment. Customer may not assign, transfer, or convey these Terms and Conditions, or any part hereof, or its right, title or interest herein, without the prior written consent of the Company. Subject to the foregoing, these Terms and Conditions shall be binding upon and inure to the benefit of the Parties and Customer's permitted successors and assigns.

**23. Compliance with Laws; Equal Employment Opportunity/Affirmative Action; Antibribery and Corruption.** Customer shall at all times conduct itself in accordance with the highest standards of ethics and comply with all laws, rules, regulations, statutes, court decisions and guidance issued by any local, state, federal or foreign governmental authority or any political subdivision or instrumentality thereof.

Customer shall, and shall cause its Affiliates and its and its Affiliates' respective employees, officers, directors, managers, members, partners, shareholders, agents, attorneys or third-party advisors (collectively, "**Representatives**") to comply with the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**"), the U.K. Bribery Act and any other applicable anti-bribery or anti-corruption law. Customer covenants and agrees that it shall not (and that it shall cause its Affiliates and its and its Affiliates' respective Representatives not to) promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, to any third person or entity, including any Non-US Official (as such term is defined in the FCPA), in each case, in violation of the FCPA, the U.K. Bribery Act and any other applicable anti-bribery or anti-corruption law. Customer further covenants that it shall (and that it shall cause each of its Affiliates and its and its Affiliates' respective Representatives to) maintain systems of internal controls (including accounting systems, purchasing systems and billing systems) to ensure compliance with the FCPA, the U.K. Bribery Act and any other applicable anti-bribery or anti-corruption Law. Upon request by Company, Customer shall provide to Company and its Affiliates responsive information and certifications (and/or allow Company to review books and records) concerning Customer's, its Affiliates' and its and its Affiliates' respective Representatives' compliance with applicable anti-bribery or anti-corruption laws, rules, regulations and statutes. Customer shall promptly notify Company if Customer becomes aware of any violation of this Section 23 or any action, suit or proceeding brought against Customer, its Affiliates or its or its Affiliates' respective Representatives in connection with any applicable anti-bribery or anti-corruption laws, rules, regulations and statutes.

Customer acknowledges that Company is committed to eliminating all risk of bribery and corruption, influence peddling, money laundering and tax evasion or the facilitation thereof in its business activities. Customer must immediately notify Company of any suspected, or known, breaches of the FCPA, the U.K. Bribery Act or any other applicable anti-bribery or anti-corruption laws. Customer may raise this alert through their point of contact or through the Trust Line: <https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>.



None of Customer's employees, beneficial owners, shareholders, or any other person who is involved in or will benefit from the performance of these Terms and Conditions or has an interest in Customer:

- (a) is a civil servant, public or governmental official;
- (b) is an official or employee of Company or one of its Affiliates; or
- (c) has been convicted of, or otherwise been subjected to any administrative sanction or penalty for, any offence involving fraud, bribery, corruption, influence peddling, money laundering, or any other criminal offence involving dishonesty as an element. Customer will immediately notify Company if any such individuals are the subject of any investigation into any such offenses.

Customer undertakes and covenants to Company that it shall not, alone or in conjunction with any other person, directly or indirectly, offer, pay, give, promise to pay or give, or authorize the payment or giving of any money, gift, undue advantage, or anything of value to any employee, official or authorized representatives of Company.

In the event Customer has concerns related to ethics, compliance or Company's Principles of Responsibility, and/or any potential violations of these policies, Customer is welcome to make use Company's GreenLine. The GreenLine is Company's global helpline for external stakeholders. It is a confidential channel through which customers can ask questions and raise concerns. Reports can be made using the following link: <https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>.

**24. U.S. Government Work.** The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that Equipment ordered and delivered under these Terms and Conditions are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). The following provision applies only to indirect sales by Company to the U.S. Government. If the sale of the Equipment is in connection with a U.S. Government contract, Customer hereby certifies that it has provided and will provide current, accurate, and complete information, representations, and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct, and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility, or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Proposal or these Terms and Conditions, other than the Proposal or these Terms and Conditions.

**Customer:** \_\_\_\_\_

**Authorized Officer's Signature of Acceptance:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_