



TERMS AND CONDITIONS OF SALE FOR LIQID INC.

BY BUYER'S ACCEPTANCE OF THESE TERMS (WHETHER VIA A WRITTEN SIGNATURE, USE BY BUYER OF GOODS TO WHICH THESE TERMS APPLY, ACCEPTANCE BY BUYER OF GOODS TO WHICH THESE TERMS APPLY, AND/OR ANY OTHER METHOD PERMITTED UNDER APPLICABLE LAW), BUYER ACKNOWLEDGES THAT IT HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY ALL THE TERMS AND CONDITIONS CONTAINED HEREIN, AS WELL AS THE OTHER TERMS, POLICIES, AND CONDITIONS CONTAINED IN ANY LIQID GUIDES OR SUPPLEMENTAL DOCUMENTS REFERENCED HEREIN, WITH THE SAME EFFECT AS IF BUYER HAD SIGNED THESE TERMS IN WRITING.

1. **Applicability.** The terms of the following documents, listed in order of precedence, form a valid and written agreement (collectively, the "**Agreement**") between you ("**Buyer**") and Lqid Inc. ("**Seller**") and govern the sale and licensing of any products, services or software ("**Goods**"):

- a) any agreements (including reseller and distribution agreements) that expressly refer to the Goods and are signed by authorized representatives of both Parties;
- b) Seller's end user license agreement available at <https://www.liqid.com/company/legal> (the "**EULA**");
- c) any purchase orders that are signed, performed, or otherwise authorized by the Parties (each a "**Purchase Order**"); and
- d) these Terms and Conditions of Sale (these "**Terms**").

Buyer and Seller are referred to individually as a "**Party**" and collectively as the "**Parties**". The Agreement comprises the entire agreement between the Parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations, warranties, communications, both written and oral, including any preprinted terms on either Party's purchase orders, invoices, quotes or the like. Acceptance or fulfillment of Buyer's order does not constitute acceptance of any terms or conditions other than (and does not serve to modify or amend) these Terms. Seller may modify these Terms from time-to-time, in its sole discretion.

If the Goods include software (whether built into hardware circuitry as firmware, provided as a standalone computer software product, provided as a hosted service, embedded in flash memory, or stored on magnetic or other media), such software is licensed, not sold, and Buyer is granted a non-exclusive, revocable, non-assignable, and non-sublicensable right during the applicable license term to use such software solely for the purpose of operating the Goods furnished under this Agreement. Other than the rights expressly granted to Buyer hereunder, nothing herein will be construed to grant any rights or licenses to Buyer (including any right to use software in a manner or for a purpose not expressly permitted).

2. **Title, Risk of Loss, Acceptance, Shipping, Installation.**

(a) Seller will use reasonable commercial efforts to deliver Goods within a reasonable time after placement of the Purchase Order. Unless otherwise agreed in writing by the Parties, the delivery terms for the Goods will be Ex Works INCOTERM 2020 (EXW) Seller's Westminster, CO facilities (or such other location that Seller may denote at Seller's sole discretion) and in instances where software is involved with or included in the Goods the transfer will exclude any transfer of title to any such software, including without limitation any microcode, firmware, or operating system software, in which case only title to the media on which said software is stored or hosted will pass to Buyer (the "**Delivery Terms**"). Buyer will pay all costs relating to transportation, storage, delivery, duties/taxes and insurance from Seller's facilities. Buyer will provide Seller with shipping instructions and associated freight account number(s) on the applicable Order and if Buyer fails to do so, Seller may determine the carrier and means of transportation and will ship the Goods freight collect. In such instances, title and risk of loss or damage to the Goods will be transferred from Seller to Buyer upon Seller's provision of the Goods according to the Delivery Terms. Without limiting any of the foregoing, Buyer will be solely responsible for filing claims relating to any Goods lost or damaged in transit. Any lead times or shipment dates are estimates only, and Seller will in no event be liable for any loss, damage, or expenses of any kind for any failure to deliver in accordance with the given lead time or shipment date.

(b) Unless otherwise specified by Buyer and agreed to by an authorized representative of Seller in writing, all Goods will be packaged, marked, and otherwise prepared for shipment in a manner which is (i) reasonably in accordance with good commercial practice (ii) acceptable to common carriers for shipment at the lowest commercially reasonable rate for the particular Goods, (iii) in material accordance with all applicable tariffs, laws, and regulations, and (iv) reasonably adequate to facilitate safe arrival of the Goods at the designated destination.

(c) The Goods will be deemed irrevocably accepted when Seller provides the Goods according to the Delivery Terms.

(d) As between Buyer and Seller, Buyer is responsible for installation of the Goods, except when services applicable to installation of the Goods ("**Installation Services**") are set forth in an applicable Purchase Order. Where a Purchase Order sets forth that Seller will provide Installation

Services, Buyer shall use reasonable efforts to schedule said Installation Services within 3 months of Seller's delivery of the applicable Products pursuant to the Delivery Terms ("**Delivery Date**"). If, after 12 months from the Delivery Date Buyer, has not permitted Seller to complete the Installation Services, the Installation Services will automatically be deemed complete and accepted by Buyer, and Buyer will not be entitled to any refund for the Installation Services. Any further services from Seller (including additional Installation Services) require a separate agreement.

(e) As between the Parties, Seller owns all right, title and interest (including without limit all intellectual property rights and other proprietary rights) in and to Seller's technology, software, designs, engineering details, schematics, data, and other similar material relating to or incorporated in the Goods, and any accompanying documentation or information derived from any of the foregoing. Buyer will take reasonable precautions to prevent unauthorized access to or use of the foregoing by any unauthorized third parties. Buyer will not, nor allow any third party to, copy, decompile, disassemble, or otherwise reverse engineer any Goods, or attempt to do so. Buyer will not, and will prevent any third party from, removing, covering, or altering any of patent, copyright, or trademark notices displayed on or by the Goods, their packaging, or any related materials. Seller hereby expressly reserves all rights not specifically granted to Buyer hereunder.

3. **Price.** Buyer will purchase the Goods from Seller at the price set forth in Seller's invoice (the "**Price**"). All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer will be responsible for all such charges, costs and taxes; provided, that, Buyer will not be responsible for any taxes related to Seller's income, gross receipts, personnel, or real or personal property. All amounts payable are exclusive of taxes, duties, or similar charges imposed by a governmental authority. If Buyer is required to pay any withholding tax or charge on any payments due to Seller, Buyer must gross up payment so Seller receives all sums due in full, free of any deduction for any such withholding.

4. **Payment Terms.** Upon successful credit approval, and unless otherwise agreed, Buyer will pay all invoiced amounts due to Seller within 30 days of the invoice date. Buyer will make all payments to Seller in US dollars. Without limiting other remedies, all past due payments will accrue interest at the lower of (a) 1.5% per month on the unpaid balance or (b) the highest rate allowed by law. Buyer will pay all collection costs, attorneys' fees, court costs, and all other costs incurred in the collection of past due amounts. Buyer hereby grants to Seller a purchase money security interest in the Goods to secure the purchase price of the Goods until the purchase price is paid in full. Buyer agrees to execute and deliver all documents requested by Seller to perfect and maintain Seller's security interest(s). Seller may refuse to accept requests for order requests submitted by or on behalf of Buyer for any reason. The amount of credit or terms of payment may be changed, or credit withdrawn by Seller in its discretion at any time.

5. **Limited Warranty; Disclaimers.**

(a) Seller warrants to Buyer from the date Seller provides the Goods according to the Delivery Terms such Goods will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship for a period of one year (the "**Warranty Period**") (collectively, the "**Limited Warranty**").

(b) **EXCEPT FOR THE LIMITED WARRANTY, THE GOODS ARE PROVIDED "AS IS" WITH ALL FAULTS AND DEFECTS. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER WITH RESPECT TO THE GOODS, WHETHER EXPRESS OR IMPLIED BY LAW, OR IMPLIED BY COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SELLER HEREBY DISCLAIMS ALL WARRANTIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTIES PERTAINING TO MATERIALS OR SOFTWARE RELATED TO THE GOODS. FOR THE AVOIDANCE OF DOUBT, SELLER HEREBY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMIT, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, DESIGN, ACCURACY, NON-INFRINGEMENT, ENJOYMENT, INTERFERENCE, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE GOODS WILL SATISFY BUYER'S**

REQUIREMENTS OR THAT THE OPERATION OF THE GOODS WILL BE UNINTERRUPTED OR ERROR FREE. BUYER ACKNOWLEDGES THAT NO EMPLOYEE OR CONTRACTOR OF SELLER OR ANY AFFILIATE OR THIRD PARTY IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SELLER. WITHOUT LIMITING THE FOREGOING, NEITHER SELLER NOR ANY PERSON OR ENTITY ASSOCIATED WITH SELLER REPRESENTS OR WARRANTS THAT: (A) ANY CONTENT, DATA, OR INFORMATION ABOUT, FROM, OR DERIVED BY THE GOODS WILL BE UP-TO-DATE, COMPREHENSIVE OR ACCURATE; (B) RESULTS OBTAINED FROM USE OF THE GOODS OR ANY MATERIALS, INFORMATION, ITEMS OR SERVICES OFFERED VIA THE GOODS WILL BE ACCURATE OR RELIABLE; OR (C) THAT DEFECTS WILL BE CORRECTED. THE ENTIRE RISK ARISING OUT OF THE USE, PERFORMANCE, OR INABILITY TO USE GOODS REMAINS WITH BUYER. THE DISCLAIMERS DO NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

(c) The Limited Warranty does not apply in relation to problems that arise from: (i) any third-party products (including any software) or services (including those with which the Goods are combined or jointly used); (ii) any causes outside of Seller's reasonable control, including but not limited to a Force Majeure (as defined below); (iii) installation, operation, or use of Goods not in accordance with this Agreement or Seller's instructions or documentation, including Seller's Hardware Compatibility List (HCL) and the Restrictions on Use; (iv) use of Goods in an environment, in a manner, or for a purpose for which said Goods were not designed, including but not limited to any High-Risk Application (as defined below); (v) any modification, alteration, or repair of Goods by anyone other than Seller or its authorized representatives; (vi) causes attributable to normal wear and tear; (vii) use, provision, or relocation of Goods directly or indirectly in activities prohibited by applicable law, regulation, or governmental order, including export regulations (whether U.S. or otherwise), use by any entity or person appearing on applicable export exclusion list(s), or transfer to countries subject to U.S. trade embargo or restrictions; or (viii) installation, operation or use of the Goods after expiry of the applicable Warranty Period. Seller has no warranty obligations to any entity other than Buyer or for Goods purchased from any entity other than Seller or a Seller-authorized channel partner. Seller has no warranty obligation for Goods used outside the permitted territory without Seller's consent.

(d) **Restrictions on Use.** Buyer represents, warrants, and covenants that Buyer will comply with each of the following restrictions on use of the Goods (each a "**Restriction on Use**"), and acknowledges that any failure by Buyer to comply with each of the following will, without limiting any other remedies available to Seller, automatically and immediately void all warranties provided by Seller under this Agreement:

1. Buyer will not, and will not permit any third-party to, use the Goods:
 - i. in any way prohibited by law, regulation, or governmental order;
 - ii. to violate any rights of others;
 - iii. to distribute, resell, sublicense, rent, lease, or perform like activities with or using any Goods to any third party;
 - iv. to try to gain unauthorized access to, test the vulnerability of, or disrupt Goods or any service, device, data, account, or network;
 - v. to distribute spam or malware;
 - vi. in a way that may harm Goods or impair others' use thereof;
 - vii. in ways intended to work around Goods' technical limitations;
 - viii. with any unsupported hardware or software.
2. From time to time Seller may request Buyer to provide information to confirm Buyer's compliance with these terms. Buyer will comply with said requests from Seller for such information within a reasonable time, but in any event within ten business days of receipt of said request.
3. Buyer will not reverse engineer, de-compile, disassemble, or otherwise derive source code from Goods, nor will Buyer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of Goods or encourage others to do so.

(e) With respect to Goods subject to a valid warranty claim by Buyer during the applicable Warranty Period, Seller will, in its sole discretion, either: (i) repair or replace such Goods (or the defective part thereof), or (ii) credit or refund the Price of such Goods. For the avoidance of doubt, in the case of a replacement under (i) above, Seller may replace such Good(s) with comparable Good(s) that were previously used, repaired, and tested to meet Seller's specifications ("**Replacement Goods**"). Replacement Goods will be in the same or better condition than the Goods they replace. The applicable Warranty Period for Replacement Goods will be the longer of the remainder of the original Warranty Period for said Goods or 90 days. If Buyer receives a Replacement Good but

does not return the corresponding defective Good to Seller, Buyer must pay Seller for said Replacement Good.

(f) **THE REMEDIES SET FORTH IN SECTION 5(E) ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN 5(A).**

6. **Samples & Evaluations.** If an applicable Purchase Order, confirmation, quote, statement of work, or other communication from Seller related to the Goods indicates the Goods are a sample, evaluation, test, or similar (each a "**Sample**"), this Section 6 will apply and the Limited Warranty will not apply to the Goods provided under or subject to such communication. Such Goods are provided to Buyer "as is" with all faults and defects. Seller makes no warranties of any kind whatsoever with respect to such Goods, whether or express or implied (by course of dealing or performance, usage in trade, or otherwise). To the extent permitted by law, Seller hereby disclaims all warranties with respect to such Goods.

7. **Limitation of Liability.**

(a) **Indirect Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WITH RESPECT TO THIS AGREEMENT AND ANY DAMAGES OR LIABILITY ARISING HEREUNDER OR IN CONNECTION HERewith, IN NO EVENT WILL SELLER BE LIABLE TO BUYER (OR ANY AFFILIATE OF BUYER OR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, DIRECTORS, SHAREHOLDERS, AFFILIATES, CUSTOMERS, OR OTHER REPRESENTATIVES) FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, ENHANCED, OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING DAMAGES FOR LOST TIME, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF REVENUE OR PROFIT, OR FOR BUSINESS INTERRUPTION UNDER ANY THEORY OF LIABILITY, WHETHER ARISING OUT OF OR BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.**

(b) **Limitation on Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WITH RESPECT TO THIS AGREEMENT AND ANY DAMAGES OR LIABILITY ARISING IN CONNECTION HERewith, IN NO EVENT WILL SELLER'S TOTAL LIABILITY TO BUYER (OR ANY AFFILIATE OF BUYER OR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, DIRECTORS, SHAREHOLDERS, AFFILIATES, CUSTOMERS, OR OTHER REPRESENTATIVES) UNDER ANY AND ALL THEORY(IES) OF LIABILITY (INCLUDING WITHOUT LIMITATION THEORIES BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE) EXCEED THE LESSER OF (1) THE TOTAL FEES PAID BY BUYER TO SELLER UNDER THE APPLICABLE PURCHASE ORDER, OR (2) ONE-HUNDRED-THOUSAND DOLLARS (\$100,000).**

(c) **High-Risk Applications. ALL GOODS ARE MANUFACTURED SOLELY FOR STANDARD COMMERCIAL APPLICATIONS, ARE NOT FAULT-TOLERANT, AND NOT DESIGNED OR INTENDED FOR USE IN CRITICAL SAFETY SYSTEMS, LIFE-SUPPORT SYSTEM, MEDICAL DEVICE, NUCLEAR FACILITY, OR OTHER APPLICATION IN WHICH THE FAILURE OF GOODS COULD LEAD DIRECTLY TO DEATH OR INJURY ("HIGH-RISK APPLICATIONS"). BUYER ACKNOWLEDGES THAT GOODS ARE NOT INTENDED FOR HIGH-RISK APPLICATIONS AND AGREES NOT TO USE GOODS IN ANY HIGH-RISK APPLICATION. BUYER REPRESENTS AND WARRANTS TO SELLER THAT IT WILL NOT USE, OR PERMIT ANY OF ITS DIRECT OR INDIRECT CUSTOMERS TO USE GOODS IN HIGH-RISK APPLICATIONS. SELLER DISCLAIMS ANY AND ALL LIABILITY RELATED TO USE OF GOODS FOR HIGH-RISK APPLICATIONS. BUYER WILL INDEMNIFY, DEFEND, AND HOLD SELLER, ITS EMPLOYEES, DIRECTORS, AGENTS, AND OTHER REPRESENTATIVES HARMLESS AGAINST ANY LOSS, LIABILITY, OR DAMAGE OF ANY KIND THAT SELLER INCURS IN CONNECTION WITH A BREACH OF THIS WARRANTY.**

(d) **Servicing and Hot-Swap of Customer-Serviceable Items. BUYER ACKNOWLEDGES THAT ANY SERVICING, REPLACEMENT, INSTALLATION, REMOVAL, OR HOT-SWAPPING OF HIGH-POWER COMPONENTS INCLUDING BUT NOT LIMITED TO, GPUS, MEMORY MODULES, STORAGE DRIVES, OR MOTHERBOARDS, WHILE THE EQUIPMENT OR SYSTEM IS ENERGIZED (COLLECTIVELY "HOT-SWAP PROCEDURES") INVOLVES EXTREME RISK OF ELECTRIC SHOCK, SEVERE PERSONAL INJURY, DEATH, FIRE, CATASTROPHIC EQUIPMENT DAMAGE, AND MAY RESULT IN DATA LOSS, DATA CORRUPTION, PERFORMANCE DEGRADATION, OR LOSS OF OPERATIONAL INTEGRITY OF THE ENVIRONMENT. BUYER REPRESENTS AND WARRANTS TO SELLER THAT IT WILL NOT PERFORM, AND WILL NOT PERMIT ANY THIRD PARTY, INCLUDING ANY OF ITS DIRECT OR INDIRECT CUSTOMERS, TO PERFORM, HOT-SWAP PROCEDURES OR ANY SERVICING OF CUSTOMER-**

SERVICEABLE ITEMS UNLESS THE PERSONNEL PERFORMING SUCH HOT-SWAP PROCEDURES (I) ARE APPROPRIATELY TRAINED, QUALIFIED, AND, WHERE REQUIRED BY THE CHASSIS OR SYSTEM MANUFACTURER, HOLD VALID CERTIFICATIONS FOR THE SPECIFIC CHASSIS/SYSTEM, AND (II) PERFORM THE PROCEDURES ONLY IN STRICT ACCORDANCE WITH BOTH SELLER'S CURRENT OFFICIAL SERVICING AND HOT-SWAP DOCUMENTATION AND THE CHASSIS/SYSTEM MANUFACTURER'S THEN-CURRENT OFFICIAL INSTALLATION, SERVICING, AND HOT-SWAP PROCEDURES FOR THE SPECIFIC CHASSIS OR SYSTEM INTO WHICH THE GOODS ARE BEING INSTALLED OR SWAPPED. BUYER ACKNOWLEDGES THAT THE PERFORMANCE OF ANY HOT-SWAP PROCEDURE IS A HIGH-RISK ACTIVITY AND SELLER DISCLAIMS ANY AND ALL LIABILITY RELATED TO HOT-SWAP PROCEDURES, EVEN WHEN PERFORMED ACCORDING TO ALL CURRENT GUIDELINES, SPECIFICATIONS AND PROCEDURES BY DULY QUALIFIED TECHNICIANS. BUYER WILL INDEMNIFY, DEFEND, AND HOLD SELLER, ITS EMPLOYEES, DIRECTORS, AGENTS, AND REPRESENTATIVES HARMLESS AGAINST ANY LOSS, LIABILITY, OR DAMAGE OF ANY KIND THAT SELLER INCURS IN CONNECTION WITH THE PERFORMANCE OF ANY HOT-SWAP PROCEDURES. ANY BREACH OF THIS SECTION 7(D) SHALL AUTOMATICALLY AND IMMEDIATELY VOID ALL WARRANTIES WITH RESPECT TO THE AFFECTED GOODS. NOTWITHSTANDING THE FOREGOING, COMPONENTS THAT ARE EXPRESSLY DESIGNED AND DOCUMENTED BY BOTH SELLER AND THE SYSTEM/CHASSIS MANUFACTURER TO BE HOT-PLUGGABLE (SUCH AS POWER SUPPLY UNITS, SYSTEM COOLING FANS, AND HOT-PLUG DRIVE BAYS) MAY BE SERVICED, INSTALLED OR REMOVED WHILE THE SYSTEM IS ENERGIZED, PROVIDED THE PROCEDURE IS PERFORMED STRICTLY FOLLOWING THE THEN-CURRENT OFFICIAL HOT-PLUG DOCUMENTATION OF BOTH SELLER AND THE SYSTEM/CHASSIS MANUFACTURER. STRICT COMPLIANCE FOR SUCH COMPONENTS SHALL NOT BREACH SECTION 7(D) OR VOID THE WARRANTY, PROVIDED NO DAMAGE OCCURS. THE LIMITATIONS SET FORTH IN SECTIONS 7(A) AND 7(B) SHALL APPLY FULLY TO ANY CLAIMS ARISING FROM HOT-SWAP PROCEDURES OR SERVICING PERFORMED IN VIOLATION OF THIS SECTION.

(e) Severability and Enforceability. **THE PARTIES ACKNOWLEDGE THIS SECTION 7 IS AN ESSENTIAL PART OF THE BARGAIN BETWEEN THE PARTIES AND THE PARTIES WOULD NOT HAVE ENTERED INTO THE TRANSACTIONS HEREUNDER ON THE TERMS HEREOF WITHOUT THE PRESENCE OF SECTION 7 AS WRITTEN. THE PARTIES AGREE SECTION 7 SHOULD AND WILL APPLY TO ALL TRANSACTIONS HEREUNDER REGARDLESS OF THE FAILURE OF ANY REMEDY HEREUNDER OF ITS ESSENTIAL PURPOSE.**

(f) Acknowledgement of Criticality. **THE PARTIES ACKNOWLEDGE SECTION 7 HAS BEEN INCLUDED AS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT AND NEITHER PARTY WOULD HAVE ENTERED INTO THIS AGREEMENT BUT FOR THE LIMITATIONS OF LIABILITY AS SET FORTH HEREIN.**

8. Termination. In addition to any remedies that may be provided under this Agreement, Seller may terminate this Agreement (in whole or in part, including any pending Purchase Order or warranty) with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for fifteen days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of this Agreement, in whole or in part and such failure continues for fifteen days after Buyer's receipt of written notice of nonpayment; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. The Buyer may only terminate this Agreement upon a material breach by Seller, and after having provided Seller prompt notice of such material breach and such material breach continues un-remedied for a period of thirty days. For the avoidance of doubt, Buyer acknowledges that all Purchase Orders made are firm orders (once accepted by Seller in writing) and such Purchase Orders may not be canceled or modified by Buyer without the prior written approval of Seller. Neither Party will incur liability for exercising its rights to terminate this Agreement.

9. Confidential Information. Buyer will keep all non-public information or material provided to Buyer by Seller that is (1) in tangible form and labelled "confidential" or the like, or, (2) information which a reasonable person knew or should have known to be confidential ("Confidential Information") that Buyer receives in connection with this Agreement confidential using the same protections that Buyer uses for its own information of like importance, but in no event less than reasonable care. All software (including both source code and object code) comprising part of or included with the Goods

is Confidential Information. Buyer will only use Confidential Information to the extent strictly necessary in order to fulfill the purposes contemplated by this Agreement or as otherwise agreed by the parties in written. Confidential Information may be disclosed solely to employees, contractors and consultants of Buyer who have a legitimate need to know such information and are bound to the Buyer under confidentiality restrictions substantially equivalent to this Section. Buyer's obligations under this Section with respect to Confidential Information will not apply to information that: (a) was rightfully in the possession of Buyer without any obligation of confidentiality prior to receipt of such Confidential Information from the Seller, (b) is or becomes a matter of public knowledge through no fault of Buyer, (c) is rightfully received by Buyer from a third party without a duty of confidentiality, or (d) is independently developed by Buyer without breach of any confidentiality obligations, as evidenced by sufficient documentation prepared by Buyer during its ordinary course of business. Buyer may disclose (i) Confidential Information to the extent such disclosure is required by law or the order of a court or similar administrative body, provided that Buyer notifies Seller of such required disclosure promptly and in writing and cooperates with Seller, at Seller's request and expense, in any lawful action to contest or limit the scope of such required disclosure. The Parties acknowledge that breach of this Section will cause irreparable damage to Seller for which monetary damages will be an inadequate remedy.

10. Export Control and Government Regulations. Buyer acknowledges that any or all of the Goods may be subject to export control laws including without limit 15 CFR § 730-774, related regulations, regulatory determinations, and judicial decisions (the "Export Regulations"), as well as any other economic sanctions laws and regulations, and may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Buyer represent, warrants, and covenants that (1) with respect to all Goods, Buyer will comply with all applicable Export Regulations; (2) Buyer is not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Dept. list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Dept. Denied Persons List, Entity List or any other list of parties subject to sanctions under any economic sanctions laws or regulations; and (3) Buyer will not permit Goods to be used for purposes prohibited by law, including, prohibited development, design, or manufacture of missiles or other weapons.

11. General. A Party will not be liable or responsible to the other Party, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (other than Buyer's payment obligations) when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of such Party including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, supply chain interruptions, industrial disturbances, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage ("Force Majeure"). Buyer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves a Party of any of its obligations under this Agreement and any assignment shall inure to the benefit of permitted assigns, provided however, Seller may fulfill any or all of its obligations hereunder through subcontractors. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. The Parties agree that any controversy or claim arising out of or relating to this Agreement, including with respect to any breach, will be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The place of arbitration will be Denver, Colorado, and the arbitrator will apply the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the

laws of any jurisdiction other than those of the State of Colorado. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in person hearings. The arbitrator will agree to these limits prior to accepting appointment. The Parties will share equally in its costs of the arbitrator and the administrative fees of the arbitration (but each Party will otherwise bear its own costs). The Parties agree that failure or refusal of a Party to pay its required share of arbitrator compensation or administrative charges will constitute a waiver by that Party to present evidence or legal argument or cross-examine witness. Nothing in this Section will limit a Party's right to seek injunctive relief in court due to a breach of confidentiality or infringement of a Party's intellectual property rights. The UN Convention for the International Sale of Goods will not apply to this Agreement. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") will be in writing and addressed to the Parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving Party in writing. All Notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees pre- paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (i) upon receipt of the receiving Party, and (ii) if the Party giving the Notice has complied with the requirements of this Section. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement. No waiver by a Party of any provision hereunder is effective unless explicitly set forth in writing and signed by such Party. No failure or delay to exercise any right, remedy or privilege arising hereunder operates, or is construed, as a waiver thereof. No single or partial exercise of any right, remedy, or privilege hereunder precludes any other exercise thereof or the exercise of any other right, remedy, or privilege. Each Party will comply with all applicable laws, regulations and ordinances. Each Party will maintain in effect all licenses, permissions, authorizations, consents and permits needed to carry out its obligations under this Agreement. The Goods and all related documentation are "commercial items" pursuant to FAR Part 12 and DFARS Part 212, as applicable. Any use of the Goods and all related documentation by or for the U.S. Government will be governed solely by this Agreement.