

# SIERRA INSTRUMENTS

## GENERAL TERMS AND CONDITIONS OF SALE



**DEFINITIONS.** As used herein: "Seller" means SIERRA Instruments, Inc. "Buyer" means the entity to which Seller's Offer is made or the entity purchasing Goods and/or Services from Seller. "Goods" or "Products" means the products, parts, materials, and/or equipment included in Seller's Offer and/or Buyer's Order. "Standard Product" means fully designed and developed products previously sold by Seller to customers. "Services" means services included in Seller's Offer and/or Buyer's Order to be performed by Seller. "Offer" means any quotation, bid, or proposal for Goods and/or Services made by Seller to Buyer. "Order" means a purchase order or similar purchase instrument issued by Buyer to Seller for the purchase of Goods and/or Services. All references to "Seller's terms and conditions" herein mean and include (i) the General Terms and Conditions of Sale set forth herein; (ii) Seller's Special Terms and Conditions, to the extent referenced in Seller's Offer; and (iii) any other terms and conditions mutually agreed by the Parties in writing. Seller and Buyer are sometimes referred to herein individually as a "Party" and jointly as the "Parties".

1. **OFFERS.** Unless stated otherwise in writing by Seller, Seller's Offer shall be valid for thirty (30) days from the date of such Offer. Any extension to the validity period shall be at Seller's sole discretion. Seller reserves the right to withdraw and/or revise the Offer at any time during the validity period unless it is accepted by Buyer in its entirety. The prices offered by Seller apply only to the specific details of the Offer, including quantities, specifications, statement of work, and delivery schedules and Seller's terms and conditions.
2. **ACCEPTANCE OF BUYER'S ORDER.** Seller's Offer and any Order issued by Buyer to Seller for Goods and/or Services, and any amendments thereto, are strictly limited to Seller's terms and conditions. Buyer's issuance of an Order in response to Seller's Offer shall conclusively evidence Buyer's unconditional acceptance of Seller's terms and conditions irrespective of any different terms and conditions included in Buyer's Order and Seller hereby rejects and shall not be bound by any terms or conditions in Buyer's Order or other written communications that differ from, add to, or modify Seller's terms and conditions. Seller's terms and conditions shall govern and apply to Orders accepted by Seller whether they are attached to Seller's Offer or referenced on Seller's website. Seller's failure to object to any terms and conditions or any other provisions contained in any communication from Buyer do not waive any of Seller's terms and conditions specified herein.
3. **PRICES.** All prices, invoices, and payments shall be in the currency specified in Seller's Offer. A minimum purchase amount of \$50.00 applies to all Orders except where payment is made by credit card. Unless expressly stated otherwise in Seller's Offer, all prices are exclusive of special packing and packaging, installation, commissioning, and training costs.
4. **PAYMENT TERMS – TRADITIONAL / NON-ONLINE SALES ORDERS.** Subject to Seller's approval of Buyer's credit, and unless expressly stated otherwise in Seller's Offer, payment terms for domestic Orders are net thirty (30) days from date of Seller's invoice. At Seller's sole discretion, payment terms for international Orders shall be either (i) cash in advance by wire transfer or (ii) by an irrevocable letter of credit confirmed with Seller's bank. Buyer shall pay interest on all late payments at a rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under Seller's terms and conditions or at law, which Seller does not waive by the exercise of any rights hereunder, Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for three (3) days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise. If Seller at any time determines, in its sole and absolute discretion, that Buyer is not financially sound or responsible or may be unable to pay in full and in a timely manner all amounts due to Seller, Seller shall have the right to require immediate payment in full in cleared funds prior to continuing work or incurring any further cost. Buyer must raise any dispute relating to an invoice within fifteen (15) days of the date of invoice. If Buyer's dispute is held to be valid, Seller shall credit Buyer the disputed amount.
5. **PAYMENT TERMS – ONLINE SALES ORDERS.** The terms of sale shall apply from the moment an online sale has occurred and credit card transaction accepted by Seller. If Seller in its judgment at any time deems that by reason of the financial condition of the Buyer, or otherwise, the continuance of production, or of shipment on the terms specified is not justified, Seller reserves the right to alter the planned shipment arrangement. All online sales are done by credit card and are immediate. Should the Buyer be in default of the terms stated above, Seller shall add to the Buyer's account, all reasonable costs of collection, including attorney's fees, and other collection fees and expenses incurred by Seller.
6. **TAXES.** Unless expressly stated otherwise in Seller's Offer, 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 shall be responsible for all such taxes, duties, and charges; provided, however, that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real property, or other assets.
7. **INSPECTION AND TESTS.** All Goods manufactured by Seller are subject to Seller's standard inspection and quality assurance processes at Seller's facility by Seller's personnel. Any additional requirements must be mutually agreed by the Parties in writing and may be withheld by the Seller due to a pandemic outbreak.
8. **PACKING AND PACKAGING.** All Goods shall be packed and packaged in accordance with Seller's standard commercial packing and packaging methods. Any nonstandard or special packing or packaging requested by Buyer is subject to Seller's written agreement and shall be at Buyer's sole expense.
9. **DELIVERY, SHIPPING TERMS, TITLE, AND RISK OF LOSS.** Unless agreed otherwise by Seller in writing, shipping terms shall be as expressly stated in Seller's Offer. If Seller's Offer does not specify shipping terms, all shipments within the United States shall be delivered Free on Board (F.O.B.) origin at Seller's shipping dock in accordance with the version of the Uniform Commercial Code in effect as of the date of Buyer's Order, and all shipments to locations outside the United States shall be delivered Free Carrier Alongside (FCA) to Seller's shipping dock in accordance with the version of Incoterms in effect as of the date of Buyer's Order. Risk of loss and title to Goods shall pass upon such delivery. If Seller prepays shipping, insurance, or other related charges, Buyer agrees to reimburse Seller promptly for such charges.
10. **EXPORT COMPLIANCE.** All Goods, Services, and technical information provided by Seller to Buyer are subject to the export control laws and regulations of the United States of America including, without limitation, the International Traffic in Arms Regulation (ITAR) and the Export Administration Regulations (EAR), and may be subject to export and/or import regulations in other countries. Buyer agrees and hereby covenants that it will not export or re-export Goods to Cuba, Iran, North Korea, Sudan, Syria, or to any restricted/embargoed country as may be designated from time to time by the U.S. Government unless otherwise authorized by the U.S. Government. Buyer further agrees that it will not (i) sell, transfer, export or re-export Goods for use in activities that involve the development, production, use, or stockpiling of nuclear, chemical, biological weapons, or missiles; (ii) use such Goods in any facilities that are engaged in activities related to such weapons or their delivery systems (e.g., ballistic missile systems, space launch vehicles, etc.); Buyer acknowledges that U.S. law prohibits the sale, transfer, export, re-export to, or participation in any export transaction involving Goods with individuals or companies listed in (i) the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List; (ii) the U.S. Department of Treasury's Specially Designated Nationals and Blocked Persons Lists; or (iii) the U.S. Department of State's Debarred Persons List. Buyer agrees to indemnify and hold Seller harmless from any claims or liability arising from Buyer's failure to comply with all such export control laws and regulations. The Parties each agree to provide to the other in a timely manner such information and assistance as may reasonably be required in connection with screening end-users and securing any required authorizations or licenses. The delivery schedules delineated in Seller's Offer and/or Buyer's Order are calculated from the date of receipt of any required export license(s). Seller shall commence work only after receipt of a valid export license(s) from the appropriate U.S. Government agencies or other applicable governmental agencies; provided, however, Buyer may, at its sole risk, authorize Seller to commence work under Buyer's Order prior to receipt of an export license. In such case, Buyer agrees that it is fully liable to Seller for all costs incurred by Seller in the performance of Buyer's Order and shall reimburse Seller for such costs in the event any required export license or authorization is denied or cancelled, or if any restrictions imposed by the issuing agency render continued performance of Buyer's Order impossible or impracticable. Any Order accepted by Seller which cannot be fulfilled due to law or regulations or Seller's inability to obtain any required export license(s), may be cancelled by Seller without any further liabilities or obligations to Buyer.
11. **ANTI-BOYCOTT.** Buyer warrants that Buyer shall not violate or cause Seller to violate the U.S. Antiboycott Provisions of the U.S. Export Administration Regulations issued pursuant to the U.S. Export Administration Act of 1979, as amended, in connection with Buyer's purchase of Products/Services and that Buyer shall not request or require Seller to make statements or certifications against countries that are not subject to boycott by the United States federal government.
12. **DELIVERY SCHEDULES AND FORCE MAJEURE.** All dates for delivery of Goods and provision of Services are approximate estimates only and require prompt receipt of all necessary Buyer-furnished information, instructions, materials, and equipment, if applicable, and Seller shall not be liable for non-adherence with such dates. Any delay or failure of Seller to perform its agreed obligations under Buyer's Order shall be excused if such delay or failure is the result of an unforeseeable event or occurrence beyond the reasonable control of Seller, and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority, inability to obtain any necessary import or export licenses or other consents, terrorism,

fires, floods, windstorms, explosions, riots, natural disasters, wars, pandemics, sabotage, supplier delays, labor problems (including lockouts, strikes, and slowdowns), inability to obtain power, utilities, materials, labor, equipment, transportation, or court injunction.

**13. CHANGES.** Buyer may request changes within the general scope of Buyer's Order by providing written notice to Seller; provided, however, such changes shall not be effective unless and until Seller, at its sole discretion, consents to such changes in writing. If any such changes cause an increase in the cost or time required for performance of any part of Buyer's Order, an equitable adjustment shall be made to the price and/or delivery schedule, and the Parties shall execute a written modification to Buyer's Order to reflect such changes and adjustments.

**14. ORDER CANCELLATION.** Seller, at its sole discretion and subject to Seller's written authorization, may allow Buyer to cancel all or a portion of Buyer's Order for Standard Products or Services. If so authorized, Buyer's cancellation of any Order for Standard Products is subject to Seller's then current Order cancellation policy and restocking charges. All returned Standard Products must be in new and unused condition. For authorized cancellations of Orders for Services, Buyer shall pay Seller in full for all fully burdened direct and indirect costs incurred by Seller for Services performed, plus a reasonable profit thereon. Seller will notify Buyer of the amount owed, which amount shall be immediately due and payable to Seller. All Orders for nonstandard products are non-cancellable and non-returnable and Buyer is liable for payment of the full Order price for same. Blanket orders, master supply agreements, and similar contractual agreements which are accepted and confirmed by Seller are non-cancellable and Buyer shall pay Seller the full Order value for the balance of quantities not previously called off or delivered to Buyer. All such quantities shall be shipped and invoiced no later than the earlier of either (i) the last delivery date or expiration date specified in Buyer's Order or (ii) twelve (12) months from the date of Buyer's order.

**15. TERMINATION FOR DEFAULT.** In the event that a Party (the "Breaching Party") is in breach of a material provision of Buyer's Order, the other Party (the "Non-Breaching Party") shall submit a written cure notice to the Breaching Party advising of such breach. Except in the case of amounts due Seller from Buyer, which shall be paid immediately upon Buyer's receipt of the notice, the Breaching Party shall have thirty (30) days from receipt of such notice to cure the breach. If the Breaching Party does not cure the breach within the thirty (30) day cure period, the Non-Breaching Party may terminate Buyer's Order for default. Either Party may immediately terminate Buyer's Order if the other Party is adjudicated bankrupt, files a petition for bankruptcy, makes an assignment for the benefit of creditors, or if an action under any law for the relief of debtors is taken.

**16. LIMITED WARRANTY.**

(a) Product Warranty Period. Seller warrants that all Goods delivered and Services provided under Buyer's Order, except consumable and fragile materials as described below, shall be free from defects in material and workmanship, and conform to Seller's specifications for a period not to exceed the first occurring date corresponding to the following listed time intervals, as specified below by Product and Service type:

Product/Service Type	Warranty Period (Months from Date of Original Shipment)	
	Instrument Warranty	Sensor Warranty
SmartTrak® 50 Series Meter and Controller	12 months <sup>1</sup>	12 months <sup>1</sup>
SmartTrak® 100 Series, MicroTrak™ 101, and MaxTrak® Meters and Controllers	12 months <sup>1</sup>	12 months <sup>1</sup>
InnovaSonic® 203 Ultrasonic Liquid Flow Meter	12 months	12 months
InnovaSonic® 210 Portable Ultrasonic Liquid Flow Meter	12 months	12 months
InnovaMass® 240S/241S Vortex Flow Meter	12 months	12 months
InnovaSwitch 615 Series switch	12 months	12 months
FastFlo and BoilerTrak 620 Series Flow Meter	12 months <sup>1</sup>	12 months <sup>1</sup>
SierraTrak 625S Thermal Flow Meter	12 months	12 months
AirTrak® 628S Inline Mass Flow Meter	12 months <sup>1</sup>	12 months <sup>1</sup>
QuadraTherm® 640i Thermal Insertion Mass Flow Meter	12 months <sup>1</sup>	DrySense™ - Lifetime <sup>2</sup>
SteelMass® 640S Industrial Insertion Mass Flow Meter	12 months <sup>1</sup>	DrySense™ - Lifetime <sup>2</sup>
BioTrak 645i/745i Thermal Mass Flow Meter	12 months	12 months
BioTrak 645S/745S Thermal Mass Flow Meter	12 months	12 months
MultiTrak 670S Multi-Point System	12 months	DrySense™ - Lifetime <sup>2</sup>
QuadraTherm® 780i Series Inline Thermal Mass Flow Meter	12 months <sup>1</sup>	DrySense™ - Lifetime <sup>2</sup>
FlatTrak 780S Series Inline Thermal Mass Flow Meter	12 months <sup>1</sup>	DrySense™ - Lifetime <sup>2</sup>
FlatTrak 780S Ultra High Purity Series Inline Thermal Mass Flow Meter	12 months <sup>1</sup>	12 months <sup>1</sup>
TopTrak® 820/820S Series Mass Flow Meter	12 months <sup>1</sup>	12 months <sup>1</sup>
CalTrak Primary Standard Gas Flow Calibration Systems	12 months	NA
FlowTrak Flow Conditioners	12 months <sup>1</sup>	N/A
d-flux Multiparameter Flow Meters and Flow Controllers	36 months	36 months
RedyCompact® MEMS Gas Meter and Regulator	36 months	36 months/Lifetime No Drift <sup>3</sup>
RedyIndustrial® MEMS Gas Meter and Controller	36 months	36 months/Lifetime No Drift <sup>3</sup>
RedySmart® MEMS Gas Flow Meter and Controller	36 months	36 months/Lifetime No Drift <sup>3</sup>
TM100 Thermal Mass Flow Meters	36 months	36 months
TM500 Thermal Mass Flow Meters	36 months	36 months
Seller Factory Repairs	90 days	90 days
Seller Field Services	90 days	90 days

Notes:  
<sup>1</sup> An additional one (1) year of warranty is available. Consult Seller for pricing.  
<sup>2</sup> Seller also offers a lifetime warranty on all DrySense™ sensors standard with Sierra models 640i, 780i, 640S, 780S, and 670S instruments sold after January 1, 2010. This warranty does not extend to the Model 620S, the BoilerTrak™, the HT (High Temperature) 640S/780S sensor, the 780S UHP (Ultra High Purity) sensors, the TM100 sensor, or the TM500 sensor. The lifetime warranty covers electrical or mechanical failure of the sensor over the lifetime of the product. Electrical failure is defined as an open (infinite ohms as measured by an ohmmeter), a short (zero ohms as measured by an ohmmeter) or excessive drift of the resistance values of the temperature and velocity elements in relation to each other as measured in accordance with the validation procedures detailed in the Smart Interface Program (SIP) provided with each instrument upon order. Mechanical failure is defined as the mechanical breakage of the sensors or probe shaft components including the failure of any welds joining these components.<sup>3</sup> Seller defines no-drift as less than 1% of full scale over the life of the instrument. If a drift of greater than 1% of full scale occurs over the sensor's lifetime, the sensor and/or entire instrument will be repaired or replaced and recalibrated free of charge. This warranty applies to all MEMS/CMOS thermal mass flow sensors standard sold after January 15, 2020. This warranty is only valid if the unit is exclusively used with the gas or gases specified during the initial calibration or recalibration, without any additives in any form and under the operating conditions (temperature, inlet and outlet pressure, full scale flow rate) for which the unit was originally specified.

(b) **Consumable and Fragile Material Warranty.** Seller warrants that consumable materials, which include, but are not limited to, batteries, lamps, filters, scrubbers, activated charcoal, pens, paper, plastic tubing, and all fragile materials such as glass and ceramic components, supplied by Seller either as part of an instrument or system, or separately, will be free from defects in material and workmanship at the time of shipment. A list of key consumables and expected lifetimes may be found in the applicable Seller equipment operation and maintenance manual.

(c) **Exclusions.** The foregoing warranty is limited to original Goods supplied by Seller and shall not be construed to apply to the simultaneous and/or interdependent operation of such products with devices (hardware and/or software) supplied by third parties. This warranty does not apply to any Goods that, upon examination by Seller, or Seller's authorized service provider, are found to have been (i) mishandled, misused, abused, or damaged by Buyer or any third party; (ii) altered from their original state; (iii) repaired by a party other than Seller without Seller's prior written approval; or (iv) improperly stored, installed, operated, or maintained in a manner inconsistent with Seller's instructions. This warranty does not apply to defects attributed to (i) normal wear and tear or (ii) failure to comply with Seller's safety warnings. This warranty is not intended to cover Buyer's routine maintenance tasks, nor does it include replacement of consumables, such as batteries, fittings, and o-rings. Seller, at its sole option, shall either repair or replace defective Goods, or issue Buyer a credit for the original price of the defective Goods. Such repair, replacement, or credit shall be Buyer's sole remedy for defective Goods and Services. Under no circumstances is Seller liable for recall, retrieval, removal, dismantling, re-installation, redeployment, or re-commissioning of any defective Goods or any costs associated therewith including, but not limited to, any subsea work performed below the waterline, heavy lift operations, or the transportation to or from offshore locations. The warranty period for repaired or replaced Goods or re-performed Services shall be the greater of (i) ninety (90) days or (ii) the unexpired portion of the original warranty period. Seller warrants that Services will be competently performed by persons reasonably skilled in their performance. Any claim for breach of this warranty must be made within ninety (90) days after completion of the specific Services for which breach is claimed. Seller shall re-perform defective Services if timely claimed, and such re-performance by Seller shall be Buyer's sole remedy for such breach. Upon the expiration of the applicable warranty period, Seller's warranty liability shall cease and terminate. Seller's Application Software (qMix RealTime, product related Smart Interface Portals and drivers, and Factory Calibration Software) is not warranted to run concurrent with other application programs installed on the same computer or platform unless specifically agreed to by Seller in writing for special application programs authorized by Seller. The warranty for software products may be voided if the personal computer (PC) hardware has been modified by the end user. The warranty does not cover any damages or discoloration caused by particulates deposited by dirty gases, liquids, residue or any other source.

(d) **Corrosive and Dangerous Gas Policy.** The warranty of any of Seller's d-flux Multiparameter Series, 50, 100 or 800 Series Mass Flow Meters or Controllers is void once the device is exposed to any of the following corrosive gases: Boron Trichloride (BCl<sub>3</sub>) Chlorine (Cl<sub>2</sub>), Ethylene Oxide (C<sub>2</sub>H<sub>4</sub>O), Fluorine (F<sub>2</sub>), Hydrogen Chloride (HCl), Hydrogen Fluoride (HF), Hydrogen Sulfide (H<sub>2</sub>S), Nitrogen Dioxide (NO<sub>2</sub>), Tetraethyl Orthosilicate (Teos), Tungsten Hexafluoride (WF<sub>6</sub>), Sulfur Dioxide (SO<sub>2</sub>), or Uranium Hexafluoride (UF<sub>6</sub>). Warranty does not cover electronics drift or recalibration expenses for any reason other than the failure described above. Warranty for RedyCompact®, RedySmart®, or RedyIndustrial® does not cover usage of any corrosive gas not compatible with the wetted materials listed:

**Wetted Material Sensor Compartment**

- Aluminum
- Stainless Steel

**Sensor Element CMOS**

- Silicon (Si)
- Silicon oxides (SiO or SiO<sub>2</sub>)
- Silicon nitride (Si<sub>3</sub>N<sub>4</sub>)
- Stainless Steel
- Hysol FP4450/4451TD
- Gold connectors

(e) **Registration.** To assure warranty service, customers must register their products online on Seller's website. Online registration of your products is required for our warranty process. Register now at <http://www.sierrainstruments.com/register>.

(f) **THESE EXPRESS WARRANTIES, INCLUDING THE REMEDIES SET FORTH HEREIN, ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS INTENDED OR GIVEN. IN THE CASE OF GOODS OTHER THAN THOSE OF SELLER'S OWN MANUFACTURE, SELLER MAKES NO WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED.**

**17. RETURN AUTHORIZATIONS.** Buyer's return of nonconforming or defective Goods to Seller is subject to Seller's then current return authorization process and procedures. Buyer shall promptly notify Seller of any non-conformance or defects in Goods, and provide Seller a reasonable opportunity to inspect such Goods. Goods shall not be returned without Seller's prior authorization, as evidenced by a Return Material Authorization (RMA) number issued by Seller. Once a RMA number is obtained, Buyer shall return Goods transportation and insurance prepaid in accordance with instructions issued by Seller. Failure to follow Seller's return authorization procedures may result in lost Goods, delays, additional service, restocking charges, warranty denial, or refusal of a return shipment. The RMA number must appear on the shipping label and all paperwork associated with the return. Buyer shall identify the model or part number, description, and serial number, if applicable, for each of the Goods returned along with an explanation of the nonconformance or defect. Issuance of an RMA number by Seller does not necessarily mean Seller agrees that returned Goods are nonconforming or defective or covered under warranty, or that Goods will be repaired or replaced at no cost to Buyer. Goods determined by Seller to be nonconforming or defective and covered by Seller's warranty shall be repaired or replaced at Seller's expense and shall be returned to Buyer at Seller's expense. If any Goods returned by Buyer are found not to be nonconforming or defective, as applicable, Buyer shall be so notified, and such Goods shall be returned to Buyer at Buyer's expense. For defective Goods not covered by this warranty, repair or replacement shall not be performed until and unless Buyer issues an Order to Seller authorizing such repair or replacement at Seller's then-current repair or replacement price. In addition, Seller may charge Buyer for any testing or inspection costs. In no event shall Seller retain or store returned Goods for more than three (3) months.

**18. NUCLEAR QUALIFICATION.** The products offered by Seller is not intended for use in connection with any nuclear facility or activity unless covered by a specific quotation where the conditions of such usage will be detailed. If equipment is used in a nuclear facility or activity without a supporting quotation, Seller disclaims any and all liability from any damage, injury or contamination, and the Buyer shall indemnify and hold Seller, its officers, agents, employees, successors, assigns and customers, whether direct or indirect, harmless from and against any and all losses, damages or expenses of whatever form or nature, including attorney's fees and other costs of defending any action, which they, or any of them, may sustain or incur, whether as a result of breach of contract, warranty, tort (including negligence), strict liability or other theories of law, by reason of such use.

**19. SOFTWARE LICENSE PROVISIONS.** Seller shall provide Buyer a user's license for Seller's software, subject to the following restrictions:

- (a) Seller-supplied software may include a combination of proprietary and/or copyrighted software owned Seller and/or third-party suppliers. Third party software, when incorporated as part of Seller's software, is provided with all required license fees paid by Seller, and is subject to certain restricted use provisions as specified by the third party manufacturer.
- (b) Copyrighted and/or proprietary software included from third parties, whether a part of Seller's software or required to be used in conjunction with Seller software, will be subject to its own restricted use and/or license provisions.
- (c) Software shall only be used only on PC-based computer system(s) supplied by, or designated by, Seller.
- (d) Software shall not be used in whole, or in part, on any other computer system not supplied by, or designated by, Seller.
- (e) Copying Seller's or third-party operating manuals or software is strictly prohibited without the prior written permission of the Seller.
- (f) Seller's software, including all operating manuals and other documentation, is the proprietary information of Seller and is copyright protected.

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(g) Seller's software is non-transferable to any third parties, including other end-users.

Seller may terminate this license, at its sole option, if the Buyer and/or licensee does not comply with requirements of the license or these software license provisions.

**20. TOOLING.** Unless agreed otherwise by Seller in writing, all tooling, fixtures, equipment, tools, software, and designs produced, acquired, or used by Seller for the purposes of fulfilling Buyer's Order shall remain the property of Seller.

**21. PRODUCTION DISCONTINUATION; LAST-TIME BUY ORDERS.** Seller shall continue to offer Goods for sale provided such Goods (specific part number, model, or product family) meet Seller's business criteria established and maintained solely at Seller's discretion. Any Goods that do not or are not expected to meet Seller's business criteria may be eliminated by Seller from its offerings ("Discontinued Goods"). In such event, Seller, at its sole option, may issue last-time buy notices ("Last-Time Buy Notice") to customers who have taken delivery of the affected Goods during the two (2) years prior to the date of such notice. Seller shall use commercially reasonable efforts to provide customers a minimum of six (6) months to place orders for Discontinued Goods ("Last-Time Buy Period"). Seller's acceptance of orders for Discontinued Goods ("Last-Time Buy Orders") during the Last-Time Buy Period shall be subject to Goods availability. Seller shall schedule delivery of Last-Time Buy Orders over a period not to exceed three (3) months following acceptance of such orders. All Last-Time Buy Orders shall only be accepted on a non-cancellable, non-returnable basis. If, due to circumstances beyond Seller's control, Seller is unable to deliver the full quantity of Discontinued Goods under Buyer's Last-Time Buy Order, the balance of the undelivered quantity shall be cancelled and Seller shall have no further obligations to Buyer.

**22. BUYER'S OBLIGATION OF ASSISTANCE (APPLICABLE TO SERVICES).** To the extent Seller is required to perform Services for Buyer, Buyer shall provide Seller all information reasonably necessary for Seller to perform Services, including any plans, plant layouts, wiring instructions, operational information, previous studies, reports, or other information relative to the design, installation, and selection of equipment. Buyer shall grant or arrange for Seller to have access, as Seller reasonably requires, to all sites where Seller shall perform Services. Buyer shall also provide safe storage of Seller's equipment, materials, and tools during the performance of Services at Buyer or Buyer's customer's worksite. Buyer agrees to cooperate as necessary to facilitate Seller's performance of Services. Buyer covenants that it has fully and accurately disclosed to Seller all general and local conditions that may affect Seller's performance of Services. Buyer acknowledges that Seller is entitled to rely on information furnished by Buyer in developing its specifications, equipment selection, price, and in performing Services.

**23. PROPRIETARY RIGHTS.** Seller shall retain all right, title, and interest in and to any data, information, software programs, tools, specifications, templates, scripts, ideas, concepts, inventions, works of authorship, products, know-how, processes, techniques, and the like used or developed by Seller, its employees, and its subcontractors in connection with Buyer's Order. Buyer agrees that Seller retains all proprietary rights in and to all products, specifications, designs, discoveries, inventions, patents, copyrights, trademarks, trade secrets, and other proprietary rights relating to Goods or Services. Unless otherwise identified in writing to Seller, no information or knowledge heretofore or hereafter disclosed to Seller in the performance of, or in connection with, the terms hereof, shall be deemed to be confidential or proprietary and any such information or knowledge shall be free from restrictions, other than a claim for patent infringement, as part of the consideration hereof.

**24. PATENT, COPYRIGHT, AND TRADEMARK INDEMNIFICATION.** Seller shall hold harmless and indemnify Buyer against all third party claims, judgments, costs, and fees, including attorney fees, relating to infringement of any patent, copyright, trademark, or design to the extent that (i) the infringing Goods are manufactured, sold, or used, in whole or in part, pursuant to Seller's specifications, designs, drawings, or other technical data and (ii) provided that Buyer notifies Seller in writing of any such claim as soon as reasonably practicable, and allows Seller to control, and reasonably cooperates with Seller in, the defense of any such claim and related settlement negotiations and has in no way acted to the prejudice of the Seller's ability to control and defend such claims. To the extent that any Goods are held by a court of competent jurisdiction or are believed by Seller to infringe or otherwise violate a third party's proprietary rights, Seller may, at its option and expense, either (i) modify the affected Goods to be non-infringing; or (ii) obtain for Buyer a license to continue using such Goods on substantially the same terms set forth herein; or (iii) if neither of the foregoing alternatives are reasonably available to Seller, Seller may require Buyer to return the infringing Goods and all rights thereto, and refund to Buyer the price paid to Seller by Buyer for the infringing Goods. Seller shall have no obligation under this provision to the extent any claim is based on (i) modifications of Goods or deliverables by a party other than Seller or Seller's authorized representative; (ii) the combination, operation, or use of Goods with equipment, devices, software, or data not supplied by Seller; (iii) the use or installation of Goods in an environment for which Goods were not intended; (iv) Buyer's failure to use updated or modified versions of Goods provided by Seller; or (v) the negligent acts or omissions or willful misconduct of Buyer, its employees, representatives, or affiliates. This Section, and the indemnification provided herein, does not apply to any Goods manufactured, sold, or used, in whole or in part, pursuant to Buyer's specifications, designs, drawings, or other technical data. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF SELLER AND BUYER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

**25. CONFIDENTIALITY.** Buyer shall keep confidential and not directly or indirectly disclose to any third party any Confidential Information of Seller, as defined herein, without Seller's prior written consent. "Confidential Information" includes, but is not limited to, business, financial, statistical, and commercial information, pricing, technical data and information, formulae, analyses, trade secrets, ideas, methods, processes, know how, computer programs, designs, data sheets, schematics, configurations, and drawings. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of disclosure by Buyer; (ii) is or becomes available to Buyer on a non-confidential basis from a source other than Seller when such source is not, to the best of Buyer's knowledge, subject to any confidentiality obligation with Seller; or (iii) was independently developed by Buyer without reference to Seller's Confidential Information, and Buyer can verify development of such information by written documentation.

**26. INDEMNIFICATION.** Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party, its officers, directors, and employees (the "Indemnified Party") from and against any and all liabilities, losses, expenses, liens, claims, demands, and causes of action ("Claims") for death, personal injury, or property damage arising out of any negligent act or omission of the Indemnifying Party in the performance of Buyer's Order, except to the extent such Claims are contributed to by (i) the negligence or willful misconduct of the Indemnified Party or (ii) the negligence or willful misconduct of any third parties. Buyer agrees to indemnify, defend, and hold harmless Seller, its officers, directors, and employees for any and all Claims, including Claims asserted by third parties, related to any Goods manufactured or Services performed in whole or in part to Buyer's designs or attributed to equipment, information, or materials furnished by Buyer to Seller. The Indemnified Party agrees to (i) notify the Indemnifying Party in writing of any Claims as soon as reasonably practicable; (ii) allow the Indemnifying Party to control the defense of any such Claim and related settlement negotiations; and (iii) reasonably cooperate with the Indemnifying Party in such defense.

**27. LIMITATION OF LIABILITY.** Notwithstanding any other provision herein, under no circumstances shall Seller be liable to Buyer or any third party for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to Seller's performance under Buyer's Order, including, without limitation, loss of use, loss of revenues, loss of anticipated profits, and cost of capital, whether based upon breach of Buyer's Order, warranty, negligence, or any other type of claim, and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. Seller's total liability to Buyer arising from or related to Buyer's Order, including, but not limited to, its liability for indemnity, defense, and hold harmless obligations, is limited to no more than the amount paid by Buyer to Seller under Buyer's Order. To the extent that this limitation of liability conflicts with any other Section or provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this clause.

**28. LAWFUL USE OF GOODS.** Buyer warrants and represents that all Goods purchased by Buyer from Seller shall be used only for or in connection with lawful purposes and that such use shall strictly comply with all applicable laws and regulations, including the laws and regulations of the jurisdictions in which the Goods are purchased, resold, integrated, or used.

**29. ETHICS AND VALUES.** Seller is committed to uncompromising ethical standards, strict adherence to laws and regulations, and customer satisfaction. Buyer is encouraged to communicate any concerns or questions regarding the ethics and values of Seller with the Seller's General Manager by calling +1-831-373-0200.

**30. ORDER OF PRECEDENCE.** Any inconsistency between Seller's terms and conditions, Buyer's Order, or any other documents related thereto, shall be resolved by giving precedence in the following order: (i) Seller's Special Terms and Conditions (if applicable); (ii) Seller's Terms and Conditions of Sale; (iii) Seller's Specifications (if applicable); (iv) Statement of Work or Scope of Services (if applicable); (v) Seller's written acknowledgement of Buyer's Order; (vi) Seller's Offer, and (vii) Form of Buyer's Order.

**31. GOVERNING LAW.** The performance of the Parties, and any judicial or arbitration proceedings, shall be construed and governed in accordance with the laws of the State of California, United States of America, excepting its laws and rules relating to conflict of law. Neither (i) the United Nations Convention on Contracts for the International Sale of Goods; (ii) the 1974



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Convention on the Limitation Period in Contracts for the International Sale of Goods (hereinafter referred to as the "1974 Convention"); nor (iii) the Protocol Amending the 1974 Convention held at Vienna, Austria, on April 11, 1980, apply in any manner to the interpretation or enforcement of Seller's Offer, or Buyer's Order.

**32. DISPUTES AND ARBITRATION.** The Parties shall attempt to resolve any dispute, controversy, or claim arising under or relating to Buyer's Order, including their interpretation, performance, or termination. If the Parties are unable to resolve such dispute, either Party may refer the dispute to arbitration. The arbitration shall be conducted in English and in accordance with the Commercial Rules of the American Arbitration Association, which shall administer the arbitration and act as appointing authority. The arbitration, including the rendering of the decision and/or award, shall take place in Monterey County, California, United States of America, and shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitrator shall make the final determination as to any discovery disputes between the Parties. Examination of witnesses by the Parties and by the arbitrator shall be permitted. A written transcript of the hearing shall be made and furnished to the Parties. The cost of this transcript shall be borne equally by the Parties. The award or decision of the arbitrator shall state the reasons upon which the award or decision is based, and shall be final and binding upon the Parties. The prevailing Party shall be entitled to compensation for the expense of the arbitration, including, but not limited to, the award of attorneys' fees, at the discretion of the arbitrator. Both Parties waive their right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. The arbitrator shall have no authority to award any of the types of damages excluded hereunder, and shall be so instructed by the Parties.

**33. RELATIONSHIP OF THE PARTIES.** Each Party is an independent contractor. Neither Party shall have authority to bind the other except to the extent authorized herein. Neither Seller's Offer nor Buyer's Order are intended by the Parties to constitute or create a joint venture, pooling arrangement, partnership, or formal business organization of any kind. The Parties shall act as independent contractors at all times, and neither Party shall act as an agent for the other, and the employees of one Party shall not be deemed employees of the other Party.

**34. NO THIRD PARTY BENEFICIARIES.** Buyer's Order is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of Seller's terms and conditions.

**35. MODIFICATIONS TO ORDER.** Buyer's Order may only be modified by written instrument signed by duly authorized representatives of the Parties.

**36. NOTICES.** All notices, request, consents, claims, demands, waivers and other communications related to Buyer's Order (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the face of Buyer's Order or to such other address that may be designated by the receiving Party in writing. All Notices shall 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 herein, 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.

**37. ASSIGNMENT.** Neither Party may assign, delegate, sublicense, or transfer, whether by operation of law or otherwise, their obligations or rights hereunder without the other Party's written consent and any assignment, delegation, sublicense, or transfer without such written consent is void and of no effect. If consent is given, the obligations and liabilities of Buyer's Order shall be binding upon and inure to the benefit of the successors and assigns of the Parties. Notwithstanding this provision, Seller may subcontract work to be performed under Buyer's Order to third parties or assign Buyer's Order to a parent, subsidiary, or affiliate company of Seller. In addition, without securing such prior consent, Seller shall have the right to assign Buyer's Order to any successor, by way of merger, consolidation, or the acquisition of substantially all of the business and assets of Seller relating to the subject matter of Buyer's Order; provided, however, that such successor shall expressly assume all of the assignor's obligations and liabilities under Buyer's Order.

**38. WAIVER; REMEDIES; COSTS.** None of the Sections, terms, conditions, or provisions herein shall be waived by any act or knowledge on the part of Seller, except by written instrument signed by a duly authorized representative of Seller. The waiver by Seller of any term, condition, provision, or right hereunder or the failure to enforce at any time any of Seller's terms and conditions, or any rights with respect thereto, is not a continuing waiver or a waiver of any other rights, or of any material breach or failure of performance of Buyer. The remedies herein reserved or created for Seller shall be cumulative, and additional to any other or further remedies provided at law or in equity. Seller may remedy any breach of the terms or conditions hereof without waiving the breach remedied, or without waiving any other prior or subsequent breach. Buyer shall pay all Seller's costs and expenses, including attorney's fees, incurred by Seller in exercising any of its rights or remedies hereunder or enforcing any of the terms or conditions hereof.

**39. SEVERABILITY.** If any term, condition, or provision herein is invalid, ineffective, or unenforceable under present or future laws, then the remainder of the terms, conditions, and provisions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**40. PARTIES.** The Parties to any Offer, Order, or associated transaction are Seller and Buyer as identified above and unless expressly stated otherwise herein, no other persons, parties, or entities have any rights, or receive any benefits hereunder. No other TASI Group subsidiaries, affiliates, or business units, other than Seller, have any obligations or duties hereunder and are unrelated third parties for all purposes.

**41. HEADINGS.** The headings used herein are for reference purposes only and shall not affect the meaning or interpretation of any term, condition, or provision herein.

**42. SURVIVAL.** Any Section or provision herein which contemplates performance or observance subsequent to any termination or expiration of Buyer's Order, or which by its nature should survive, shall survive any termination or expiration of Buyer's Order and continue in full force and effect.

**43. ENTIRE AGREEMENT.** Seller's terms and conditions (including Seller's Special Terms and Conditions, if applicable) and Buyer's Order (as accepted by Seller in accordance with the terms herein), including Seller's applicable specifications, statement of work, and any other mutually agreed documents referenced therein, constitute the entire agreement between the Parties and supersede any prior oral or written agreements, commitments, understandings, or communications with respect to the subject matter of Buyer's Order.

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