



**GENERAL CONDITIONS OF SALE
COMMERCIAL & GOVERNMENT SYSTEMS**

1. **TAXES.** Except as otherwise specified, the prices stated do not include any state, federal, or local sales, use or excise taxes applicable to the sale, delivery, or use of equipment sold hereunder, including, as applicable, associated software delivered with such equipment (Product(s)), and the Buyer expressly agrees to pay to Seller, in addition to the prices stated, the amount of any such taxes, domestic or foreign, which may be imposed upon or payable by Seller.
2. **PAYMENT TERMS.** Notwithstanding any statement of terms or time of payment to the contrary appearing on the face of the order, Seller reserves the right to require payment in advance of shipment or to ship C.O.D. In the event Buyer fails to pay any invoice when due, in addition to any other right reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid. Further, Seller reserves the right to charge interest at the rate of one and one half percent (1.5%) per month, or the maximum rate permitted by law, whichever rate is lower, on any unpaid balance owing by Buyer from the date due until the date paid. It is agreed that title to any Product described herein not fully paid for at the time of delivery to Buyer shall be retained by and remain in Seller until said purchase price is fully paid and if the purchase price is to be paid on an installment basis, Buyer will prior to the time of delivery execute a note, security agreement and financing statement for such purchase price, all upon forms customarily used by Seller in similar transactions.
3. **DELIVERY.** Unless otherwise specified, delivery will be made FCA (Incoterms 2010) the place or location of Seller's factory from which Seller elects to make shipment, according to the delivery schedule specified which schedule is subject to delays due to causes beyond Seller's control. Cancellation or rescheduling of the delivery by Buyer may be subject to additional charges by Seller.
4. **FORCE MAJEURE (EXCUSABLE DELAY).** Seller shall not be liable for default or for delay in deliveries due to cause beyond its control and without its fault or negligence, including but not limited to inability to obtain material, labor or manufacturing facilities, acts of God, or of the public enemy, any preference, priority or allocation order issued by the Government, changes in applicable law or any other act of Government, fires, floods, unusually severe weather, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of Seller's suppliers. In the event of such delay, delivery dates shall be extended accordingly for a period equal to the time lost by reason of such delay. Seller shall use its reasonable efforts to remove the cause of delay and resume work as soon as possible and to mitigate delivery schedule delay. In no event shall Seller be liable for any damages. Seller reserves the right to provide a substitute product in the event the Product is discontinued. The replacement Product may be subject to commercial adjustment.
5. **SHIPMENT AND RISK OF LOSS.** In the absence of specific instructions, Seller will select the carrier to whom delivery will be made for shipment to Buyer. Except for its obligations under the sections hereof entitled "Warranty" and "Patent and Copyright Indemnification," all responsibility of Seller, including but not limited to risk of loss for all items purchased hereunder by Buyer, shall pass to Buyer FCA (Incoterms 2010) the place or location of Seller's factory from which Seller elects to make shipment at the time the articles are duly delivered to the carrier. All claims to the carrier for Products damaged or lost in transit shall be made by the Buyer.
6. **WARRANTY.** The equipment sold hereunder and its associated software delivered hereunder are subject to the following warranties:
 - A. Seller agrees to repair or replace at its discretion, without charge, any such equipment, which is defective as to design, workmanship or material, and which is returned to Seller at its factory, transportation prepaid, provided:
 - (i) Notice of the claimed defect is given Seller within one (1) year from date of delivery and equipment is returned in accordance with Seller's instructions.
 - (ii) Such equipment shall not be deemed to be defective, if, due to exposure to any condition in excess of those published in the Product specification, it shall fail to operate in a normal manner.
 - (iii) Seller's obligations with respect to such equipment are conditioned upon the proper installation, operation and maintenance of such equipment by Buyer in accordance with Seller's written directions.
 - (iv) The warranty stated in this Section 6A shall be void if such equipment is altered or repair is attempted or made by other than Seller or Seller's authorized service center.
 - B. Seller warrants that any software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, will substantially provide the functions(s) set forth in the applicable specification (or absent a specification, as described in the applicable Service Bulletin). Seller will, at its option, without charge, revise or replace such nonconforming software provided:
 - (i) Notice of the claimed defect is given Seller within one (1) year from the date of delivery.
 - (ii) Software shall not be deemed to be defective if the software or the host medium is exposed to any computer virus or to any condition in excess of those published in the applicable specification(s).
 - (iii) Seller's obligations are conditioned upon the proper installation and operation of software and the host medium in accordance with Seller's written instructions.
 - (iv) The warranty stated in this Section 6B shall be void if such software (or its host medium) is altered (or alterations are attempted) by other than Seller or Seller's authorized service center.
7. **PATENT AND COPYRIGHT INDEMNIFICATION.** Seller agrees that it will defend, at its own expense, all suits against Buyer for infringement of any United States patent or copyright covering, or alleged to cover, the Product described herein in the form sold by Seller and Seller agrees that it will pay all sums which, by final judgment or decree in any such suits, may be assessed against the Buyer on account of such infringement, provided that Seller shall be given (i) immediate written notice of all claims of any such infringement and of any suits brought or threatened against Buyer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice of the right of the Buyer to continue the use, as contemplated, of the Product so purchased. If in any such suit so defended the Product is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so, Seller may either procure the right to continue the use of the same for the Buyer, or replace the same with non-infringing product, or modify said Product so as to be non-infringing, or, if the foregoing options are not reasonably available, take back the infringing Product and refund the purchase price less a reasonable allowance for use, damage or obsolescence.
8. **SOFTWARE LICENSE FOR EQUIPMENT SPECIFIC SOFTWARE.** Software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, is copyrighted by Seller and shall remain the sole and exclusive property of Seller. Seller grants the Buyer a perpetual, worldwide, nonexclusive license to use the software only in or with the specific equipment for which it was delivered. The Buyer shall not copy, modify, or disassemble the software, or permit others to do so. Buyer shall not transfer the license granted hereby or possession of the software except as part of or with the equipment, such transfer being subject to the restrictions contained herein. Seller may terminate this license upon written notice for violation of any of the terms of the foregoing license.
9. **GOVERNING LAW.** This Agreement shall be construed in accordance with, and the rights of the parties shall be governed by, the laws of the State of Iowa, U.S.A., as the same would be applied to transactions between residents thereof, but without regard to that state's conflict of laws principles and specifically excluding the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Buyer agrees to abide by all US Government laws and export regulations, including without limitation those applicable to re-export, and when required by such laws or regulations, Buyer shall apply for the necessary and appropriate export licenses. Seller shall, at no charge to Buyer, promptly provide reasonable support and documentation if required for such export license application.
10. **FEDERAL ACQUISITION REGULATION (FAR) CLAUSES APPLICABLE TO SALES TO THE U.S. GOVERNMENT.**
 - A. The word "Contractor," as used in the FAR shall be synonymous with the word "Seller" as used in these General Conditions of Sale and any reference to the "Government" or to the "Contracting Officer" shall be synonymous with the word "Buyer." Similarly, any reference to the word "Supplies" shall be synonymous with the word "Products."
 - B. The clause set forth at FAR 52.212-4, CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS as tailored herein [pursuant to FAR 12.302], shall be applicable to all sales made directly to the U.S. Government.
 - (i) With respect to paragraphs (a) and (c) of the FAR clause, the Seller's Warranty set forth above at Article 6 shall have precedence and shall govern in the event



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of any post acceptance activity contemplated by said paragraph (a). The Seller's Warranty shall supersede and replace the *Warranty* set forth at said paragraph (o) of the FAR clause.

(ii) With respect to paragraph (h) of the FAR clause, the Seller's PATENT AND COPYRIGHT INDEMNIFICATION set forth above shall supersede and replace the *Patent Indemnity* set forth at said paragraph (h) of the FAR clause.

(iii) With respect to paragraph (k) of the FAR clause, the Seller's provision entitled "TAXES" as set forth above at Article 1 shall supersede and replace the *Taxes* provision set forth at said paragraph (k) of the FAR clause.

(iv) With respect to paragraph(s) of the FAR clause, the clarifications set forth in this paragraph shall have precedence over all other provisions of this contract.

C. The clause set forth at FAR 52.212-5, CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES EXECUTIVE ORDERS – COMMERCIAL ITEMS, as clarified herein, shall be applicable to all sales made directly to the U.S. Government.

(i) Paragraphs (b) and (c) of said clause shall only be applicable when Buyer and Seller have duly executed an addendum to the General Conditions of Sale specifically citing which of the clauses referenced in paragraphs (b) and (c) are applicable to this contract.

11. **FEDERAL ACQUISITION REGULATION (FAR) CLAUSES APPLICABLE TO SALES TO COMMERCIAL CONCERNS IN SUPPORT OF SALES TO THE U.S. GOVERNMENT.** The clause set forth at FAR 52.244-6, SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS, and the FAR clauses cited therein, shall be applicable to sales made hereunder only when such sales are specifically identified in the order as being in support of U.S. Government prime contract requirements. The actions required under the referenced clauses made applicable under this paragraph shall constitute the entirety of Seller's FAR obligations hereunder for such sales.

12. **NO WAIVER.** No failure by either party to exercise and no delay in exercising any right, power or privilege hereunder will operate as a waiver hereof, nor will any single

or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any of the provisions hereof shall not be deemed a continuing one.

13. **DISCLAIMER AND LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OF OR INABILITY TO USE ANY PRODUCT, EQUIPMENT OR ASSOCIATED SOFTWARE DESCRIBED HEREIN EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PRODUCT, EQUIPMENT, SOFTWARE OR OTHER MATERIALS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES. SELLER SHALL HAVE NO OBLIGATION OR LIABILITY FOR ANY GRATUITOUS INFORMATION OR ASSISTANCE PROVIDED BY, BUT NOT REQUIRED OF SELLER HEREUNDER. SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PRICE PAID BY BUYER FOR PRODUCTS SOLD HEREUNDER.**

14. **ENTIRE CONTRACT.** These General Conditions of Sale shall comprise the exclusive terms, conditions and agreements of the parties respecting sale of Products described herein, and supersede any provisions on the face and reverse side of Buyer's order or any prior agreement inconsistent with the provisions hereof. Acceptance by Buyer of such Products covered hereunder shall, absent a contrary agreement in writing signed by Seller, constitute acceptance of these General Conditions of Sale. The invalidity of the whole or in part of any provisions hereof shall not affect the validity of any other provision. The headings of the sections herein have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

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