



## **TERMS AND CONDITIONS OF SALE**

### **1. Acceptance of Terms.**

The sale of equipment, instrument(s), software or service part(s) (collectively hereinafter referred to as the "Product(s)") or provision of services in support of Products by Sensapex (the "Seller") to the party purchasing the Products (the "Buyer") shall be governed by these terms and conditions. Seller's offer to sell the Products to Buyer is expressly limited to Buyer's acceptance to these terms and conditions. Any of the following constitutes Buyer's unqualified acceptance of these terms and conditions ("Agreement"):

- i. Issuance or assignment of a purchase order for the Products,
- ii. Acceptance of any Product under the purchase order, or
- iii. Payment for any of the Products under the purchase order.

Additional or different terms or conditions proposed by Buyer (including any additional or different terms provided in a Buyer purchase order) are hereby rejected and shall be void and of no effect unless specifically accepted in writing by Seller. This Agreement, together with the Seller's offer, shall be the exclusive agreement between the parties for the Products, subject to the terms and conditions herein. Any prior or contemporaneous understandings, agreements, and representations, oral or written, are superseded by the terms and conditions included this Agreement. No modification to this Agreement shall be valid unless in writing and signed by Seller. Agents and sales representatives of Seller have no authority to make any representations not included herein, and any such representations should not be relied on by Buyer. In the event of any inconsistency between the terms of this Agreement and the terms of the Seller's offer, the terms of this Agreement will prevail, unless otherwise stated in the Seller's offer.

### **2. Prices and Payment.**

All price quotations are subject to written confirmation by Seller and are non-binding. All prices are exclusive of value-added, sales, use, excise or other taxes, all of which will be charged to Buyer, as applicable, other than any taxes on Seller's net income. Unless otherwise agreed to by Seller in writing, all orders must be paid for in advance in full. Confirmed purchase orders are binding on Buyer and can be cancelled or changed only with Seller's written consent. Buyer will be responsible for any shipping and/or duty charges for products that were already shipped. Seller is not liable for any delay in purchase order delivery or shipment of Products, or any damages suffered by Buyer by such delay.

If any amount owed by Buyer to Seller is overdue for more than ten (10) days, then without limiting any other rights and remedies available to Seller under the law, in equity, or under the Agreement, Seller may (i) suspend production, shipment or deliveries of any or all Products purchased by Buyer, (ii) by notice to Buyer, treat such breach by Buyer as a repudiation by Buyer of the portion of the Agreement not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable, and (iii) exercise any other rights or remedies available to Seller under applicable law. Without limiting any other right or remedy, overdue amounts will bear interest at the rate of twelve percent (12%) per annum, or if less, the maximum rate permitted by applicable law. If Seller retains a collection agency and/or attorney to collect overdue amounts, all collection costs, including attorney's fees and expenses, shall be payable by Buyer. Buyer hereby represents to Seller that Buyer is now solvent and agrees that each acceptance of delivery of the Products sold hereunder shall constitute reaffirmation of this representation at such time. If at any time Seller deems itself insecure with respect to Buyer's financial condition, Seller may, as a condition of any further obligation under this Agreement, demand, and Buyer will furnish to Seller, an irrevocable letter of credit or other security for Buyer's performance satisfactory to Seller.

### **3. Deliveries/Delay in Delivery**

All delivery times are estimates only, and in no event shall Seller be liable for any delay in delivery or assume liability in connection with shipment or delivery. Part shipments shall be permitted. Unless otherwise agreed to in writing by Seller, all Products shall be delivered FCA (Incoterms 2010) from the point of shipment. Risk of loss or damage to all or any portion of the Product shall pass to Buyer upon tender of the Product for delivery at Seller's plant point of shipment.

All Products shall be examined by Buyer upon receipt of Buyer. If Products are damaged upon receipt or do not conform to Seller's published specifications, Products shall not be moved from point of delivery, and a written claim must be filed with Seller within ten (10) business days of date of delivery. Upon receipt of a written claim for damaged or nonconforming Products, Seller will notify Buyer in writing if Products are to be returned, or if Products will be repaired.

The Seller shall reserve the right of ownership or a security interest in and to the Products subject to delivery, as permitted under applicable law, until all payments related the Products have been received by the Seller. Independently thereof, the Seller also reserves the right of ownership or security interest, as the case may be, until all other claims against the Buyer to which the Seller is entitled at the same time have been satisfied. The Buyer shall treat the Products subject to such reservation of ownership or security interest with reasonable care. Any change of location and interference by third parties, in particular by way of attachments, shall promptly be made known to the Seller in writing. In order to carry out the grant of the foregoing security interest, where applicable, the Buyer expressly grants the Seller the right to execute and file in Buyer's name any financing statement under the Uniform Commercial Code or other document required to perfect such security interest, covering the Products and any proceeds thereof, and to take such other actions as may be appropriate in connection therewith, and the Buyer agrees to promptly sign any documents required to permit the Seller to perfect any such security interest.

In the event the Buyer does not comply with the terms of payment agreed upon, Buyer agrees, without limiting any right of repossession or other remedy available to Seller, to deliver to Seller the purchased Products immediately upon Seller's request, without judicial order.

#### **4. Limited Warranty**

Subject to the limitations set forth in this Agreement, Seller warrants (the "Limited Warranty") that all Product sold by Seller will conform to Seller's published specifications therefor and shall be free from defects in materials and workmanship under normal use, handling and service. The Limited Warranty is for one (1) year after the date of shipment. The Limited Warranty is extended to two (2) years with the same terms and free of charge if the product is registered to Seller within 30 days of the delivery.

Seller shall have no obligation under the Limited Warranty or otherwise, and this Limited Warranty does not apply to Products if: (a) Product is identified by Seller as a pre-production product, alpha, beta or similar product or a prototype, (b) Product includes specialized, modified, or customized items meeting the specifications provided by Buyer; (c) Product is used in conjunction with equipment not provided by, or acknowledged as compatible by, Seller; (d) Seller determines that a problem is caused by accident, abuse, misuse, negligence, misapplication, fire, earthquake, flood, other force majeure event, failure of electrical power, the use of unauthorized parts or reagents, or unauthorized repairs or modifications; (e) Seller determines that a problem is caused during or as a result of shipment or relocation; (f) Seller's serial number has been removed or defaced from the Product; (g) the Product is modified by Buyer or any third party; or (h) a problem arises from or is based on Seller's compliance with Buyer's specifications.

To the extent the Product is incorporated into any other instrument or device, Seller makes no representation with respect to the safety, efficacy, accuracy, reliability, use, or fitness for intended purpose of such integrated product. To the extent so incorporated into any other instrument or device, Buyer hereby agrees to indemnify and hold Seller harmless from any claims, suits, liabilities, losses, damages, expenses (including reasonable attorneys' and experts' fees and expenses) and costs arising from or relating to any defects in and/or the use of integrated product to comply with any applicable laws or regulations.

Further, Buyer's rights are subject to Buyer's compliance with the procedure set forth in paragraph 6 below. Sellers' sole obligation, and Buyer's exclusive remedy for any defective Product, shall be limited, at Sellers' option, to either repairing or replacing, free of charge for materials or labor, any Product which is proved not in compliance with the Limited Warranty during the Warranty Period.

EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

#### **5. Limitation on Liability**

To the extent not prohibited by applicable law:

IN NO CASE SHALL SELLER BE LIABLE TO BUYER OR ANYONE ELSE FOR ANY LOST PROFITS OR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES UNDER OR IN CONNECTION WITH THE PRODUCTS OR THIS AGREEMENT, UPON ANY BASIS OR THEORY OF LIABILITY WHATSOEVER, INCLUDING, WITHOUT LIMITATION, IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE LOSS OR DAMAGE IS CAUSED BY SELLERS' OWN NEGLIGENCE OR FAULT. FURTHER, SELLER SHALL HAVE NO LIABILITY FOR ANY PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LOSS BASED ON THE USE OF THE PRODUCT IN COMBINATION WITH OR INTEGRATED INTO ANY OTHER INSTRUMENT OR DEVICE. IN NO EVENT WILL SELLER'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING UNDER THIS AGREEMENT WARRANTY OR OTHERWISE, REGARDLESS OF CAUSE OR ORIGIN, EXCEED THE PURCHASE PRICE OF THE APPLICABLE PRODUCT.

#### **6. Product Return/Repair Policy**

A. Buyer will notify Seller about any defective or non-operational Product. Seller will verify remotely via e-mail or telephone discussion with Buyer whether the repair of defects requires shipping the Product back to Seller. The Buyer shall provide all information requested by the Seller about the Product usage and installation and perform all the troubleshooting steps requested

by the Seller. The Seller's determination whether the Product needs to be shipped back to Seller for service is conclusive. If the Buyer ships the Product back to Seller without permission from the Seller, the Seller is allowed to charge all shipment and service costs from Buyer.

B. Only upon the permission from Seller, the Buyer will ship the defective or non-operational Product to Seller according to instructions provided by the Seller. Buyer shall pay the shipping costs.

C. Upon receipt of the returned Product, Seller will test the Product to verify the defective status of the component within the terms of the Limited Warranty and communicate such results to Buyer.

D. Seller will either send a repaired or replacement Product if the Product is in fact defective within the terms of the Limited Warranty. Seller is responsible for shipping costs of replacement Product to the Buyer if it is covered by the Limited Warranty. Insofar as the defects are cured by subsequent improvement, the Seller shall be given sufficient time and opportunity for making repairs and delivering replacement parts.

E. If the Limited Warranty is not valid for the repaired defect in accordance with the terms of paragraph 4, and Buyer requests for the service of the defect, all the shipment and repair cost, including replacement parts and work cost, shall be charged to and payable by the Buyer.

## **7. Intellectual Property Rights**

Seller hereby reserves, and shall exclusively own, all rights, title and interest (including, without limitation, all intellectual property rights throughout the world) in and to the Products and any and all related materials, as well as any inventions, works of authorship, layouts, know-how, ideas or information discovered, developed, made, conceived or reduced to practice, by Seller, in the course of the performance of this Agreement.

## **8. Safety Regulations**

A. Instruments and components supplied by the Seller are not intended for clinical use or medical purposes (e.g. for diagnosis or treatment of humans), nor for any other life-supporting system. Without limiting any other provision hereof, Buyer agrees not to use the Products for any such purposes.

B. The operating manuals and the Seller's instructions for the Products must be strictly followed in all use of the Products. The Buyer shall ensure that the Products are so used and are solely operated by selected, trained and adequately instructed skilled personnel.

C. Buyer agrees to advise all persons operating the Products of all possible hazards, such as electrical current, temperature, sharpness of objects, and the like.

D. Without limiting any other provision of this Agreement, Buyer agrees that Seller shall have no liability or obligation for any use of the Products that does not comply in all respects with the requirements and limitations set forth in this paragraph 8, and will indemnify and hold harmless Seller from and against any and all claims, liabilities, obligations and costs arising out of any such use.

## **9. Compliance with law**

Buyer agrees to comply with all applicable laws, rules, and regulations relating to this Agreement and the Products. Furthermore, Buyer shall not resell any Product, and Seller shall have no obligation to sell any Product to Buyer, to or for use of any ultimate purchaser with which Seller could not deal under the foreign or local laws and regulations. Buyer further agrees to immediately advise Seller of any information which may come to its attention concerning violation of such laws or regulations by Buyer's customers. Buyer will defend, indemnify, and hold harmless Seller from and against any violation of any laws, rules or regulations by Buyer or any of its agents, officers, directors, or employees in violation of this Section.

## **10. Choice of law and Venue**

This Agreement shall be governed by the laws of the State of New York, without regard to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is hereby excluded. If the Parties are unable to resolve any dispute or controversy arising under or in connection with this Agreement through their respective senior management representatives within thirty (30) days following the first request by either Party to participate in a settlement meeting concerning the dispute, then either party may submit the matter to be finally resolved in arbitration conducted under the Commercial Arbitration Rules of the American Arbitration Association by one (1) arbitrator appointed in accordance with the said Rules. The arbitration proceedings shall be conducted in New York City, in the English language. The award shall be final and binding upon the Parties and enforceable in any court of competent jurisdiction. Notwithstanding the foregoing, either party shall at all times have the right to commence proceedings in any court of its choice of appropriate jurisdiction to obtain interim injunctive or other relief pending arbitration.