



TERMS AND CONDITIONS OF SALE AND USE

All sales or deliveries by AppliedSensor, Inc. or any of its affiliates (“Seller”) to any buyer or recipient (“Buyer”) are subject to the following terms and conditions:

1. **ACCEPTANCE.** ALL SALES ARE EXPRESSLY LIMITED TO AND MADE CONDITIONAL UPON THE TERMS AND CONDITIONS CONTAINED HEREIN AND IN THE BILLING INVOICE (COLLECTIVELY REFERRED TO AS THE “INVOICE”). ANY OF BUYER’S TERMS AND CONDITIONS WHICH ARE IN ADDITION TO OR DIFFERENT FROM THOSE CONTAINED IN THE INVOICE WHICH ARE NOT SEPARATELY AGREED TO IN WRITING (EXCEPT ADDITIONAL PROVISIONS SPECIFYING QUANTITY AND CHARACTER OF THE PRODUCTS ORDERED) ARE HEREBY OBJECTED TO AND SHALL BE OF NO EFFECT (THE “PURCHASE ORDER”). BUYER SHALL BE DEEMED TO HAVE ASSENTED TO ALL TERMS AND CONDITIONS CONTAINED IN THE INVOICE IF EITHER AN EMPLOYEE OR REPRESENTATIVE OF BUYER EXECUTES THE INVOICE OR ANY PART OF THE PRODUCTS DESCRIBED IN THE INVOICE ARE ACCEPTED. THE INVOICE AND THE PURCHASE ORDER, AS MODIFIED BY THE INVOICE, BECOME A BINDING CONTRACT BETWEEN BUYER AND SELLER ON THE TERMS AND CONDITIONS REFLECTED IN SELLER’S DOCUMENTS (THE “AGREEMENT”). NO VARIATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON SELLER UNLESS AGREED TO IN WRITING AND SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER. THE PRODUCTS SPECIFIED IN THE INVOICE OR OTHERWISE DELIVERED TO BUYER SHALL BE REFERRED TO AS THE “PRODUCTS.”

2. **CHANGES.** Except as provided herein, orders arising hereunder may be changed or amended only by written agreement signed by both Buyer and Seller, setting forth the particular changes to be made and the effect, if any, of such changes on the price and time of delivery. Buyer may not cancel an order unless such cancellation is expressly agreed to in writing by Seller. In such event, Seller will advise Buyer of the total charge for such cancellation, and Buyer agrees to pay such charges, including storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of the order by Buyer which is permitted by Seller. Seller shall have the sole and absolute right, without liability, to modify or cancel an order or suspend shipments, in whole or in part upon written notice to Buyer, which may consist of facsimile or e-mail notification, at any time.

3. **DELIVERY, CLAIMS, DELAYS.** All sales are F.O.B. Seller’s shipping point. If shipping and handling charges are quoted or invoiced, they will include charges in addition to actual freight costs, which Buyer is otherwise responsible for. Delivery of Products to the carrier at Seller’s plant or other loading point shall constitute delivery to Buyer. Regardless of shipping terms, all risk of loss or damage in transit shall be borne by Buyer. The general method of shipment for each item will be in accordance with the method specified by Buyer. However, Seller reserves the right, in its discretion, to determine the exact method of shipment. Dates for delivery of Products are good faith estimates. Seller reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per Invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer’s obligation to accept remaining deliveries. Immediately upon Buyer’s receipt of any Products shipped hereunder, Buyer shall inspect the same and shall notify Seller in writing of any claims for shortages, defects or damages and shall hold the Products for Seller’s written instructions concerning disposition. If Buyer shall fail to so notify Seller within five days after the Products have been received by

Buyer, such Products shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by the Buyer.

Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver, or otherwise perform hereunder due to any cause beyond Seller’s reasonable control, including unsuccessful applications, act of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller’s business, fire, explosion, accident, theft, vandalism, riot, acts of war, terrorism, strikes or other labor difficulties, lightning, flood, storms, wind, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies, or power at current prices.

4. **ALLOCATION OF PRODUCTS.** If Seller is unable, for any reason, to supply the total demands for products specified in Buyer’s order, Seller may allocate its available supply among any or all buyers on such basis as Seller may deem fair and practical, without liability for any failure of performance that result therefrom.

5. **PAYMENTS.** Terms of payment are net 30 days after date of Invoice, unless otherwise stated. If the financial condition of Buyer results in the insecurity of Seller, in its sole and unfettered discretion, as to the ultimate collectability of the purchase price, Seller may, with notice to Buyer, delay or postpone the delivery of the products; and Seller, at its option, is authorized to change the terms of payment to payment in full or in part in advance of shipment of the entire undelivered balance of said products.

In the event of default by Buyer in the payment of the purchase price or otherwise, of this or any other order, Seller, at its option, without prejudice to any other of Seller’s lawful remedies, may defer delivery, cancel the Agreement, or sell any undelivered products on hand for the account of Buyer and apply such proceeds as a credit, without set-off or deduction of any kind, against the contract purchase price, and Buyer agrees to pay the balance then due to Seller on demand. Buyer agrees to pay all costs, including reasonable attorney and accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof.

6. **TAXES AND OTHER CHARGES.** Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee, or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee, or charge, Buyer shall reimburse Seller therefore in accordance with Section 5 hereof; or, in lieu of such payment Buyer shall provide Seller, at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee, or charge.

7. **WARRANTIES AND LIMITATION OF LIABILITY.** Seller warrants that its Products shall conform to the description of such Products as provided to Buyer by Seller, for a period one (1) year from the original shipment date. THIS WARRANTY IS EXCLUSIVE, AND SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE. ANY WARRANTY WITH RESPECT TO INFRINGEMENT THAT MAY BE PROVIDED BY SECTION 2-312(3) OF THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW ARE HEREBY EXCLUDED AND DISCLAIMED.

Seller’s warranties made in connection with the Products shall not be effective if the Products are designed based on specifications provided by Buyer. Notwithstanding the foregoing, the Products will never be deemed a “Work Made for Hire” under the Copyright Act of 1976, as amended from time to time, or under any other applicable law.

Seller’s warranties made in connection with the Products shall not be effective if Seller has determined, in its sole discretion, that (i) Buyer has misused the Products in any manner; (ii) Buyer has used the Products in any manner not provided for in, or in any manner inconsistent with, the description of such Products; (iii) Buyer has failed to use the Products in accordance with industry standards and practices; (iv) Buyer has failed to

use the Products in accordance with instructions, if any, furnished by Seller; or (v) the Products, or any of them, have been combined with and/or made a part of another product or service not supplied by Seller or approved by Seller.

Seller's sole and exclusive liability and Buyer's exclusive remedy with respect to Products proved to Seller's satisfaction to be defective or non-conforming shall be the replacement of such Products without charge or refund of the purchase price, in Seller's sole discretion, upon the return of such Products in accordance with Seller's instructions.

SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE INCLUDING LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USE OR ANY LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY SELLER'S GROSS NEGLIGENCE.

THE LIABILITY OF SELLER FOR DIRECT DAMAGES IN CONNECTION WITH ANY ORDER FOR PRODUCTS OR CONTRACT THEREFOR OR PRODUCTS COVERED THEREBY, REGARDLESS OF THE DELIVERY OR NON-DELIVERY, ACCEPTANCE OR NON-ACCEPTANCE OF SUCH PRODUCTS, AND WHETHER OR NOT PRODUCTS ARE CONFORMING, WILL NOT IN ANY EVENT BE GREATER THAN THE ACTUAL PURCHASE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH SUCH CLAIMS ARE MADE.

All claims must be brought within one (1) year of shipment, regardless of their nature.

8. DRAWINGS AND DESCRIPTIONS. All drawings and technical documents relating to the product submitted by one party to the other prior or subsequent to the formation of the Agreement shall remain the property of the submitting party. Drawings, technical documents or other technical information received shall not, without the consent of the other party, be used for any other purpose than that for which they were submitted and may not, without the consent of the other party, be copied, reproduced, transmitted or otherwise communicated to a third party.

9. CONFIDENTIALITY. Buyer agrees that the Products and all code, inventions, techniques, algorithms, know-how and ideas it obtains from Seller are the confidential, trade secret and proprietary property information of Seller (collectively, the "Proprietary Information"). Buyer shall hold in confidence and not use or disclose any Proprietary Information, except to the limited extent necessary to accomplish the purposes for which the parties have entered into the Agreement, and shall similarly bind in writing its employees, agents and others with access to same. Buyer further agrees not to use the Proprietary Information except in the course of performing hereunder and will not use any such Proprietary Information for its own benefit or for the benefit of any third party. Buyer may disclose Proprietary Information as required by a court order or subpoena from a court of competent jurisdiction over Buyer, but (i) the information remains Proprietary Information and subject to this Section and (ii) Buyer shall give Seller sufficient advance notice of any such disclosure so that Seller may apply for a protective order, and (iii) Buyer shall limit its disclosure to only the information that it must disclose to the court to comply with the order. In the event that Buyer receives an order, subpoena or other legal process concerning Proprietary Information, Buyer agrees to notify Seller promptly and to reasonably cooperate and assist in any lawful effort to contest the order, subpoena or other legal process and to obtain a protective order for any information it is ultimately ordered to disclose.

Buyer agrees and acknowledges that Seller will not have any adequate remedy at law for the breach or threatened breach of the provisions of the

Agreement addressing confidentiality and ownership of Intellectual Property Rights. Accordingly, in the event of any breach or threatened breach of any such provision of the Agreement, Seller shall be entitled to equitable relief from a court of competent jurisdiction (without any bond or other security being required) against any breach or threatened breach in addition to any other remedies which might be available to Seller at law or in equity.

10. BUYER'S USE OF PRODUCTS; LICENSE. Buyer shall only use the Products for purposes agreed to in writing by the parties.

Subject to the terms and conditions of the Agreement, Seller grants Buyer a non-exclusive license to use the Products and to use the Products independently or integrated in a system or other product sold or licensed by Buyer, which do not violate any and all applicable laws, regulations, and rules. Notwithstanding anything to the contrary in the Agreement, as between Buyer and Seller, Buyer shall be fully responsible and liable for all such systems or products and Seller shall have no responsibility, obligation, or liability with respect to such systems or products.

"Intellectual Property Rights" means U.S. and foreign, patents, patent applications, patent rights, trademarks, trademark registrations, trademark applications, service marks, business marks, trade names, brand names, all other names and slogans embodying business or product goodwill (or both), copyright registrations, copyrights (including those in computer programs, software, including all source code and object code, development documentation, programming tools, drawings, specifications and data), trade secrets, industrial rights, know-how, mask works, industrial designs, processes and technical information and all other registered rights now existing or hereafter created, including confidential and proprietary information, and any rights under licenses to any of the foregoing, whether or not subject to statutory registration or protection.

Buyer acknowledges and agrees that the Products are protected by applicable international and United States domestic laws, including laws relating to Intellectual Property Rights, and embodies valuable, confidential, trade secret information of Seller, the development of which required the expenditure of substantial time and money. Seller shall retain all right, title, and interest in and to the Intellectual Property Rights in, to, and under the Products. No implied license or right of any kind is granted to Buyer with respect to the Intellectual Property Rights in, to, and under the Products. All rights not expressly granted by Seller under the Agreement are hereby expressly reserved by Seller.

Buyer shall not merge, modify, alter, reverse engineer, de-compile, or disassemble the Products or any portion thereof. Except as otherwise agreed in writing, Buyer shall not make, copy or reproduce the Products or any portion thereof. Any changes, enhancements, or modifications made or suggested for the Products or with respect thereto, including all Intellectual Property Rights in, to or under the same, shall be and remain the sole and exclusive property of Seller.

Buyer has the responsibility to verify the hazards and to conduct any further research necessary to learn the hazards involved in using Products purchased from Seller. Buyer also has the duty to warn Buyer's customers and any auxiliary personnel (such as freight handlers, etc.) of any risks involved in using or handling the Products. Buyer agrees to comply with instructions, if any, furnished by Seller relating to the use of the Products and Buyer further agrees not to misuse the Products in any manner and not use the Products in any manner not provided for in, or in any manner inconsistent with, the description of such Products.

Buyer acknowledges that all software Products or Products which include software are proprietary to Seller or its licensors and are subject to copyrights and trade secrets owned by Seller or its licensors. All references in the Agreement to "purchases," "sales," or words of similar import, of software Products or Products which include software signify only the acquisition of a license for Buyer to transfer such software to its end-users in accordance with the terms of the Agreement. Seller may terminate the license and the ability of Buyer to use the Products if Seller fails to comply with the terms and conditions of the Agreement.

11. BUYER'S REPRESENTATIONS AND INDEMNITY. Buyer represents and warrants that it shall use all Products ordered herein in

accordance with Section 10 hereof "Buyer's Use of Products," and that any such use of Products will not violate any law or regulation.

Buyer represents that it has all necessary expertise in the safety and regulatory ramifications of Buyer's applications, and acknowledges and agrees that buyer is solely responsible for all legal, regulatory and safety-related requirements concerning Buyer's products and any use of Products in any applications, notwithstanding any applications-related information or support Buyer may be provided by Seller. Further, Buyer must, and hereby agrees to, fully indemnify Seller and its representatives against any damages arising out of the use of Products in any applications.

If the Products will be used independently or integrated in a system or other product sold or licensed by Buyer in accordance with the Agreement, Buyer shall ensure that each end user or other third party that uses such new product will be bound by an agreement that provides (i) that no title or any Intellectual Property Rights therein is transferred to such end user or third party; (ii) prohibit the duplication or copying of the Products and any software contained therein and prohibit the merger, modification, alteration, reverse engineering, de-compilation, or disassembly of the Products and any software contained therein; (iii) disclaim to the extent permitted by applicable law, such party's and its licensor's and vendor's liability for damages, whether direct, indirect, incidental or consequential, arising from the use of its Product or software contained therein; and (iv) with respect to such Products, disclaim to the extent permitted by applicable law all representations and warranties, express or implied, including any warranty of merchantability, fitness for a particular purpose or arising from the course of dealing between the parties or usage of trade.

Buyer agrees to indemnify and hold harmless Seller, its employees, agents, successors, officers, and assigns, from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that Seller may sustain or incur as a result of any claim against Seller based upon negligence, breach of warranty, strict liability in tort, contract, strict product liability, or any other theory of law brought by Buyer, its officers, agents, employees, successors or assigns, by Buyer's customers, by end users, by auxiliary personnel (such as freight handlers, etc.) or by other third parties, arising out of, directly or indirectly, the use of Seller's Products, or by reason of Buyer's failure to perform its obligations contained herein. Buyer shall notify Seller in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident, or incident involving Seller's Products which results in personal injury or damage to property, and Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident and shall make available to Seller all statements, reports and tests made by Buyer or made available to Buyer by others. The furnishing of such information to Seller and any investigation by Seller of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Seller.

12. INTELLECTUAL PROPERTY DISCLAIMER. Seller does not warrant that the use or sale of the Products delivered hereunder will not infringe or misappropriate any Intellectual Property Right covering the Product itself or the use thereof in combination with other products or in the operation of any process.

13. RETURNS. Products may not be returned for credit except with Seller's permission, and then only in strict compliance with Seller's return shipment instructions.

14. TECHNICAL ASSISTANCE. At Buyer's request, Seller may, at Seller's discretion, furnish technical assistance and information with respect to Seller's products. SELLER MAKES NO WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR INFRINGEMENT, WITH RESPECT TO TECHNICAL ASSISTANCE OR INFORMATION PROVIDED BY SELLER OR SELLER'S PERSONNEL ANY SUGGESTIONS BY SELLER REGARDING USE, SELECTION, APPLICATION OR SUITABILITY OF THE PRODUCTS SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS SPECIFICALLY DESIGNATED AS SUCH IN A WRITING SIGNED

BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER.

15. MISCELLANEOUS. Seller's failure to strictly enforce any term or condition of the Agreement or to exercise any right arising hereunder shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions or exercise such right thereafter. All rights and remedies under this order are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver of a default by Seller hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any provision of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The section or paragraph headings herein are for convenience only; they form no part of the terms and conditions and shall not affect their interpretation. The word including as used herein shall be deemed to be followed by the phrase "but not limited to".

16. ENTIRE AGREEMENT; ASSIGNMENT. The Agreement contains the entire agreement between the parties and supersedes all prior agreements both written and oral, with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth the Agreement. Buyer shall not assign (by operation of law or otherwise) the Agreement without the prior written approval of Seller, and any attempted assignment of any rights, duties or obligations hereunder without such approval shall be void. The Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, successors and permitted assigns. The obligations of Buyer pursuant to the Agreement shall be binding upon the successors and permitted assigns as well as Buyer.

17. GOVERNING LAW, JURISDICTION AND EXPORT LAWS. The Agreement shall be interpreted, construed and enforced in accordance with the laws (both substantive and procedural) of the State of New Jersey, USA, without regard for, or application of, the conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement or any actions hereunder. The parties hereby (i) irrevocably submits to the jurisdiction of the state courts of, and the federal courts located in, the State of New Jersey in any action or proceeding arising out of or relating to, the Agreement, including any action or legal proceeding to enforce or compel performance or seek injunctive relief arising from a duty or obligation assumed under the Agreement. Buyer agrees to comply fully with all relevant export laws and regulations of the United States Department of Commerce ("Export Laws") to assure Products are (i) exported, directly or indirectly, in violation of Export Laws; or (ii) are intended to be used for any purposes prohibited by the Export Laws.

18. NOTIFICATION. Any notice required hereunder shall be sent by messenger service. Registered letter, fax, or delivery service to the parties at the addresses specified on the Invoice or at subsequently changed addresses. Notification shall be considered as having arrived (a) if sent by messenger service; when it is handed over, (b) if sent by registered letter; two days after being posted, (c) if sent by fax; on receipt of fax copy; or (d) if sent by delivery service; on the date that it is scheduled for delivery, or (e) if sent by e-mail, on receipt.

19. SURVIVAL OF OBLIGATIONS. Any obligations and duties and/or terms and conditions of the Agreement (including terms defined in other sections of the Agreement) which by their nature extend beyond the expiration or termination of the Agreement shall survive the expiration or termination of the Agreement. Not in limitation of the foregoing, Sections 3, 7, 10 and 11 hereof shall survive the expiration or termination of the Agreement.