

Any sales of products ("Products") or supply of services ("Services") shall be subject to the terms and conditions below in so far as they do not conflict with any other contractual provisions expressly agreed between Buyer and Scioteq ("Seller"). Products or Services specific warranty riders supplementing or superseding the warranty provisions contained herein may apply. No other general terms and conditions that may be referred to in Buyer's request for proposal or order shall apply, even if these have not been rejected by Seller.

## 1 PROPOSALS, PURCHASE ORDERS AND CONFIRMATIONS

- 1.1 "Proposal" shall mean all the documents, appendices, and any revision and/or amendment thereof, including without limitation commercial, technical, and financial documents, sent by the Seller to the Buyer, together with these terms and conditions of sale.
- 1.2 The Proposal is only valid for the period mentioned in it.
- 1.3 The Proposal shall be non-binding, unless otherwise stipulated therein. Regardless of whether the Seller has submitted a Proposal, a contract between the Seller and the Buyer shall only be binding upon the Seller's confirmation in writing of the Buyer's purchase order.
- 1.4 Acknowledgement of receipt of the Buyer's purchase order by the Seller shall not constitute confirmation of the purchase order and shall not be binding on Seller.
- 1.5 Deviations in the Buyer's purchase order not being in line with the Seller's Proposal shall be clearly marked in the purchase order. Deviations in the Seller's order confirmation from the Buyer's purchase order shall likewise be clearly marked. Deviations shall be promptly agreed upon between the Seller and the Buyer in writing. In the event of a dispute, the Seller's order confirmation shall be decisive.

## 2 DELIVERY

- 2.1 Unless otherwise agreed, Products shall be delivered FCA Duluth, GA (Incoterm® 2010). Any delivery date mentioned in the order confirmation is for information only. Products shall be delivered in Seller's standard package with Seller's standard labelling and markings. If Seller cannot ship the Products or supply the Services due to an act or omission of the Buyer, all costs associated therewith (including but not limited to storage, handling and insurance costs) shall be charged to Buyer.
- 2.2 If changes in specifications, commercial, technical and financial documentations are made at the request of the Buyer, and accepted by the Seller, the Seller shall be entitled to an equitable adjustment in the price, delivery date, or both.
- 2.3 Buyer's failure to give notice to Seller of any claim within 8 days after the delivery of the Products or supply of the Services shall constitute an unqualified acceptance thereof. Buyer shall file a claim for loss of or transport damage to the Products against the carrier immediately upon delivery and notify Seller forthwith. Rejected Products must be kept at Seller's disposal and can only be returned with Seller's prior consent.

## 3 TITLE

Title to the Products shall pass to the Buyer upon delivery. Notwithstanding the passage of title upon delivery, Seller reserves a security interest in all Products, all additions and accessions thereto and all replacement Products to secure payment of Buyer's obligations. Such security interest is retained until Buyer's obligations are paid in full.

## 4 TAXES AND DUTIES

- 4.1 Any taxes, duties, excises and other charges levied in connection with the sale of the Products or the supply of the Services shall be borne by Buyer, except for those taxes and duties, which are payable by Seller prior to the delivery of the Products pursuant to the agreed upon Incoterm® or the supply of the Services.
- 4.2 If Buyer exports the Products, Seller may charge VAT, which will be credited only upon receipt of valid proof of arrival of the Products in the country of destination.

## 5 INVOICING – PAYMENT - DEFAULT

- 5.1 Prices cover the manufacturing of Products or delivery of Services compliant with specifications as per Seller's Proposal. Any modification of any of these terms will lead to a price adjustment.
- 5.2 Seller shall invoice Buyer the price of the Products on a shipment per shipment basis. Seller shall invoice Buyer the price of the Services in advance at the commencement of the service agreement, or, for projects, prior to the supply thereof. The price shall be in the currency of Seller's quotation or applicable price list.
- 5.3 Buyer shall pay Seller's invoices within 30 days as from the date of Seller's invoice without any deduction or set-off. If Seller cannot complete a milestone in the schedule due to an act or omission of the Buyer, the installment payment related to such milestone shall be deemed payable if Buyer's act or omission prevents Seller from completing the milestone within 30 days from Seller's notification.
- 5.4 If payment is delayed, Buyer shall pay Seller late payment interest at 7% per annum as well as a flat-rate and irreducible allowance of 15% on the overdue amounts.
- 5.5 If Buyer fails to comply with Seller's payment terms or is unable to provide satisfactory security, Seller may, at its option, suspend its obligations until full payment or satisfactory securities has been received by Seller, or consider all pending orders cancelled by Buyer. Any claim by Buyer shall not entitle Buyer to delay or withhold payment of the overdue amounts.

## 6 ON SITE INSTALLATION – ACCEPTANCE TESTS

- 6.1 If Seller has agreed to install the Products at a designated site, Buyer shall carry the Products at its expense from the place of delivery to the site of installation. Buyers shall timely meet Seller's (pre-) installation requirements and perform all works to be carried out by Buyer. Buyer shall inform Seller of the health and safety risks on site at least 30 days prior to the installation and assume health and safety co-ordination between the contractors on site.
- 6.2 If Seller has agreed that the Products or Services are subject to factory or on-site acceptance tests, Seller and Buyer shall agree on the acceptance procedures and tests. Buyer shall accept the Products or Services if the acceptance tests only reveal non-critical issues not preventing the operational use thereof subject to Seller remedying such issues within a reasonable time period. Any operational use of the Products or Services by the Buyer or any other user shall be deemed to constitute a final acceptance. If no factory or on-site acceptance tests have been agreed, Buyer shall, upon installation, properly inspect the Products. Buyer's failure to complete the tests or carry out the inspection within 3 months from the shipment shall constitute an unqualified acceptance and a waiver by Buyer of all claims with respect thereto. Seller shall repair or replace for free any Product found defective or non-conforming within this time period and carry both ways cost of packing, transport and insurance related to the replacement of the Product.

## 7 FORCE MAJEURE

- 7.1 Neither party shall be liable for default or delay in the performance of any of its obligations (except for any payment obligation) due to Acts of God, fires, explosions, strikes, riots, acts of terrorism, civil or international wars, invasions, any acts of government including refusal by governments to grant import or export licenses or the cancellation thereof, inability to obtain raw materials, components or parts due to Force Majeure, or a contingency of a supplier of goods and services, or any other event beyond the reasonable control of either party.
- 7.2 If an event of Force Majeure, occurs, performance of a Party's obligations under this Agreement affected by such an event shall be suspended during the period of delay caused by the event of Force Majeure and the period of performance shall be automatically extended, without penalty, for an equal period.
- 7.3 The party claiming the event of Force Majeure shall promptly inform the other Party to this effect in writing.
- 7.4 If an event of Force majeure occurs, the Parties shall consult with one another with a view to finding an equitable solution and shall use all reasonable efforts to minimize the consequence of the occurrence. If the conditions of the Force Majeure prevail more than 3 months and the Parties have been unable to reach an equitable solution, the other party shall have the right to cancel the order, without any of the parties incurring any liability and without any indemnity.
- 7.5 In case of Force Majeure, Seller shall allocate the available Products and supply the Services amongst its Buyers at its discretion and without any indemnity.

## 8 WARRANTY

### 8.1 Warranty

- (a) Hardware: Seller warrants that the Products shall (i) conform to the specifications in effect at the delivery and (ii) be free from defects in material and workmanship.
- (b) Software: Seller warrants that software shall perform substantially in accordance with the specifications in effect at the date of delivery. Software is inherently susceptible to bugs and errors. Seller makes no warranty with respect to software which is provided to Buyer on an "as-is" basis and does not warrant uninterrupted or error-free operation of the Products.
- (c) Services: Seller warrants that the Services shall be carried out in a workmanlike manner.

## 8.2 The Warranty Period

- (a) Hardware: new complete Products: 12 months commencing on the date of shipment; spare parts or refurbished products: 3 months commencing on date of shipment
- (b) Software: 3 months commencing on the date of delivery or, if applicable, the date of acceptance as per Article 6.2.
- (c) Services: 3 months commencing after the Services have been carried out.

If Article 6.2 is applicable, the date of shipment in (a), (b), and (c) is replaced with the date of acceptance or 3 months after shipment, whichever is first.

In case of repair or replacement, the warranty period shall continue to run until its expiry or 3 months after the repair or replacement, whichever is longer.

## 8.3 Conditions precedent for Warranty to apply

The Warranty shall apply only to the extent the Products, Services or any parts thereof have:

- (a) been handled, transported, stored and installed (if and to the extent such activities have not been carried out by Seller) in accordance with Seller's instructions including but not limited to use of original packaging, covered and secure location, minimum temperature, maximum humidity, and installation by Seller certified personnel,...) or, in absence thereof, in a professional and workmanlike manner;
- (b) not been subject to any unauthorized access, alteration, modification or repair or attempts thereto (such as removal of warning labels, original seals or serial numbers) or any abuse or damage;
- (c) been at all times "normally used" for the specified purpose and operated and maintained in strict accordance with the instructions set forth in the operating and maintenance manual or, in absence thereof, in a professional and workmanlike manner. For the purpose hereof, "normally used" shall mean a regular, ordinary and routine use as intended or as recommended by Seller;
- (d) not been connected to or used in combination with other Products, products or systems (hardware and/or software) not compatible with the Product.

## 8.4 Exclusions from the Warranty

In no event shall Seller be liable for any defects, failures, loss of or damage caused by or resulting from (i) wear and tear, (ii) any external cause or event out of Seller's control, (iii) use or operation of the Product or Service prior to acceptance, (iv) any act or negligence of Buyer or any third party, or (v) any phenomena inherent to the technology used such as image retention, burn-in, vibrations, etc. The Warranty shall not apply to consumables (lamps, liquids, filters, batteries, etc.) or reflectors, fans, pumps, LED's or to No Fault Found cases, where the reported failure or defect could not be replicated or confirmed. Any third party product or any part thereof which Seller merely resells with the Products or Services, is subject to the original manufacturer's warranty and no separate warranty is given in respect thereof by Seller.

## 8.5 Claims for repair or replacement under Warranty

Any claim under the Warranty must be notified to Seller in writing within 8 days from the discovery of the defect or failure.

## 8.6 Remedies under the Warranty

Under the Warranty, Seller shall, at its sole option and cost, and without undue delay, with respect to:

- (a) Hardware: (i) repair or correct the Product or part; or (ii) replace the Product or supply part(s) or component(s). A replacement part shall be at least functionally equivalent to the original part. The replaced Product, parts and/or components shall become the property of Seller and shall, at Seller's request, be returned by Buyer to Seller within 15 days. If Buyer fails to return, the Seller shall invoice the replaced Product, parts and/or components at list price.
- (b) Software: amend the software or supply an alternative version of the software.
- (c) Service: reperform the Service.

The remedies specified in this Article 8 shall constitute Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for Seller's breach of the Warranty hereunder.

## 8.7 Return of defective Product or parts – Repair - Replacement

- (a) Under Warranty: The repair or replacement under the Warranty only covers the cost of material and in factory labor. The repair or correction shall be carried out at Seller's repair facility, unless Seller has agreed in writing to perform the repair or replacement elsewhere, in which case time and travel and living expenses of the service engineer shall be payable by Buyer in accordance with Seller's then applicable rates and procedures. Buyer shall not return a defective Product or part thereof without Seller's prior written approval. Upon approval, Seller shall issue to Buyer a Return Material Authorization (RMA) number. The one-way cost of packing, transport and insurance related to shipping the Product or part for repair or replacement shall be borne by Buyer. Buyer shall pack the Products correctly so as to protect them from transport damage and properly back-up any data stored thereon. The one-way cost of packing, transport and insurance related to shipping of the repaired or replacement Product or part to Buyer shall be borne by Seller.
- (b) Out of Warranty: Repairs or replacements out of Warranty shall be carried out at Seller's repair facility. The defective Product or part thereof shall not be returned by Buyer without Seller's prior written approval. Upon receipt of the Return Material Authorization (RMA) number the Buyer, at its expense, shall arrange the packing, transport and insurance related to the shipment of the Product or part to the repair facility of the Seller. Buyer shall pack the Products correctly so as to protect them from transport damage and properly back-up any data stored thereon. Seller will issue a cost estimation for the repair or replacement of the Product or part thereof and the one-way cost of packing, transport and insurance. Storage fees will be charged from 30 days after submission of the cost estimation, for every month started. If, six months after submission of cost estimation, no reaction of Buyer is received, Seller is authorized to scrap the Products or parts thereof without incurring any liability towards Buyer; the due amounts remain payable.
- (c) No failure found: any product returned to Seller for which no failure could be found after thorough investigation are considered "out of warranty" and are chargeable with an inspection fee and return transportation costs. Storage fees are applicable from 30 days after submission of the cost estimation, for every month started. If, six months after submission of cost estimation, no formal response of the Buyer have been received, Seller is authorized to scrap the Products or parts thereof without incurring any liability towards Buyer; the due amounts remain payable.

8.8 The provisions of this clause shall be the full extent of Seller's liability for defects, including latent defects, in the products and services sold or software delivered hereunder, shall be to the exclusion of any consequential loss or damage suffered, and shall be in lieu of any warranty, condition or liability implied by law, including but not limited to those of merchantability or fitness for any particular purpose other than those expressed above, all of which are hereby expressly excluded;

## 9 TERMINATION - CANCELLATION

9.1 In the event that (i) a petition in bankruptcy is filed by or against Buyer, or (ii) Buyer is declared bankrupt, or (iii) Buyer becomes insolvent or his credit becomes impaired in the reasonable opinion of Seller, or (iv) proceedings are initiated by or against Buyer seeking appointment of a receiver, reorganization, liquidation, dissolution, debt rearrangement or any other similar relief, or (v) if Buyer fails to perform or fulfil at any time any material obligation or condition hereunder, Seller, at its discretion, shall have the right to either suspend the performance of his obligations until the Buyer performs their obligations or to terminate the order with immediate effect without prior summons or notice period by registered letter. In the latter case, without prejudice to any other remedies, Seller may repossess the Products without the intervention of any court and Buyer shall assist Seller hereto at no charge.

9.2 If Buyer cancels the order, Buyer shall pay Seller a compensation equal to 20% of the order amount, without prejudice to Seller's right to seek reimbursement equal to its actual losses. Advances which have already been paid, will accrue definitively to Seller to the extent of the compensation due.

## 10 LIMITATION OF LIABILITY

10.1 Seller's exclusive liability and Buyer's exclusive remedy for any and all claims, whether arising out of contract, warranty, negligence, Seller's failure to comply with laws and regulations, strict liability or otherwise, shall be limited to the price of the Product or Service in relation to which the claim is made or, at Seller's option, the replacement thereof.

10.2 In no event shall Seller be liable for special, incidental, punitive, indirect or consequential damages, (including without limitation loss of profits, business, revenue, goodwill or anticipated savings) even if advised of the possibility of such damages..

10.3 No limitation applies for liability in relation to death or personal injury caused by the negligence of Seller, willful misconduct, gross negligence, intentional acts or other cases where liability may not be excluded or limited under applicable law.

## 11 THIRD PARTY RIGHTS

11.1 Seller shall hold harmless and indemnify Buyer from and against direct damages, losses and expenses arising from infringement of any patent, trademark or copyright of a third party by a Product or Service and defend and settle at its sole expense any claim brought against Buyer, provided that (i) Seller is promptly notified by Buyer in writing after a claim has been asserted against Buyer, and (ii) Seller shall assume sole control of the defense and any settlement negotiations, and (iii) Buyer shall not make any representation or concession, negotiate, settle or compromise any claim without the

- prior written consent of Seller and (iv) Buyer, at its cost, shall provide assistance and support, as Seller may require, in connection with the defense and any settlement negotiations.
- 11.2 Seller shall have no indemnity obligation for any Product or Service, or any portion thereof, (i) that is based on specifications, drawings, models or other data furnished by Buyer or, (ii) that is not provided by Seller or, (iii) that is modified by a party other than Seller and not at its direction or, (iv) to the extent Buyer continues the allegedly infringing activity after having been provided modifications that avoid the alleged infringement, or (v) where the use of the Product or Service, or the combination or thereof with other products, processes or materials or the distribution thereof rather than the Product or Service itself is the primary cause of an alleged infringement.
- 11.3 If it has been determined that Seller has infringed or misappropriated such third party rights, Seller may, at its option and cost, (i) modify the Product or Service in such a way that it shall not infringe upon or misappropriate the rights of the third party or (ii) obtain for Buyer a license or other right to use the Product or Service or (iii) replace the Product or Service with a non-infringing Product or Service. If the foregoing options are not available on commercially reasonable terms and conditions, Seller may require the return of the Product and refund to Buyer amounts paid for the Product minus a reasonable allowance for the period during which Buyer has used the Product.
- 11.4 The remedies set forth in this Article 11 shall constitute Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for a third party claim that the Product or Service infringes or misappropriates any intellectual property right of a third party.
- 12 CONFIDENTIALITY**
- 12.1 Information of all kinds which may include proprietary information, commercial, financial or technical data or documentation marked confidential, processes, know-how and other unpublished information and which may be disclosed by the Seller to the Buyer within the framework of the Proposal and/or the purchase order and during the subsequent discussions related to the Proposal and/or the purchase order, and during purchase order performance, shall be kept in strict confidence by the Buyer. This confidential information shall not be used by the Buyer for any purpose other than discussion and evaluation of the Proposal and/or as the case may be completion of the purchase order, to the extent and for the use authorized in the Proposal.
- 12.2 Each Party will take the necessary measures to ensure that its employees, representatives and contractors adhere to this confidentiality clause. The Buyer shall also make sure that his customer if any will be bound by this confidentiality clause.
- 13 INTELLECTUAL PROPERTY RIGHTS**
- 13.1 Any patents, trademarks, copyrights, any other intellectual property rights or any proprietary or confidential information, whether existing prior to the date of Buyer's order or developed as of the date thereof, shall remain the property of Seller or its licensor, as the case may be, and nothing herein shall be construed as conferring on the Buyer by implication or otherwise, any right, title or interest in, or any license under any intellectual property right, confidential information or other trade secret. Seller shall however not enforce its intellectual property rights against Buyer, its successors or assigns that are operating the Products or Services as authorized hereunder.
- 13.2 The software supplied by Seller to Buyer hereunder shall remain the property of Seller or the licensor at all times. Buyer shall at all times comply with terms and conditions of the (sub) license imposed by Seller or the licensor. Subject to the payment by Buyer of all outstanding amounts, Seller hereby grants to Buyer a non-exclusive (sub) license to use the software solely for the purpose of operating the Products delivered hereunder. Seller hereby grants to Buyer the right to assign the software user license referred to above to the end-user to whom Buyer resells the Products.
- 13.3 Buyer hereby grants to the Seller a non-assignable non-exclusive, royalty-free license to use any intellectual property rights (including, without limitation, patents, designs, trademarks, service marks and copyrights and any applications for any of the preceding) owned or controlled by the Buyer to the extent necessary for the Seller to supply the Products.
- 13.4 Unless agreed in writing by the Seller, the Buyer shall not be allowed under any circumstances to adapt, reproduce and modify all or part of the Products, or the documentation or data related to the Products or Services, or carry out reverse engineering analysis of the Products.
- 14 DATA PROTECTION**
- 14.1 The Seller may save, process, use and reuse any data obtained in connection with the sales of Products or supply of Services. Upon request of Seller, Buyer shall promptly inform Seller, in writing, about the measures Buyer takes to fulfil its obligations under the applicable data protection laws. Buyer shall take suitable technical and organizational measures to protect personal data received from Seller against loss and unlawful processing.
- 14.2 Buyer warrants towards Seller that (i) the data is lawfully obtained from data subjects; (ii) it has provided data subjects all necessary and relevant information with regard to the processing of their data as required under the applicable data protection laws; (iii) the data is lawfully provided to Seller; and (iv) the data processing does not infringe any third-party rights. Buyer ensures that the personal data provided to Seller will be up-to-date and relevant for the Products sold or Services supplied.
- 14.3 Buyer agrees that it remains the contact point for data subjects and that it will inform data subjects hereof. Buyer undertakes to inform Seller of any request of a data subject to rectify or to erase its data or to limit the processing of its data and shall assist the seller in fulfilling its obligation to respond to requests from the persons concerned for the purpose of exercising their rights. Buyer must also help Seller to ensure compliance with the obligations regarding notification and communication of breaches, impact assessment and prior consultation on data protection.
- 14.4 Buyer shall indemnify and keep indemnified Seller against all claims, proceedings or actions brought by a competent public authority or an individual against Seller arising out of any breach by Buyer or any of its processors of any third party rights or its obligations under applicable data protection laws.
- 14.5 Buyer refrains from recruiting a Subcontractor without the prior written consent of Seller.
- 14.6 Buyer ensures that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 14.7 After the termination of the agreement, Buyer must, at the first request of the Seller, delete all personal data or return it to Seller and destroy the existing copies, unless the law requires the storage of personal data.
- 14.8 Buyer must make available, to Seller, all the information necessary to demonstrate compliance with these obligations and to allow audits, including inspections, to be carried out by Seller or another controller it has appointed.
- 15 EXPORT**
- 15.1 Buyer shall comply with any applicable export control laws and regulations or any end-user certificate issued thereunder and shall not export, nor permit the export or re-export of (i) any proprietary information or software or any copy thereof, or (ii) the Products in violation of any such laws and regulations, or without all required licenses and authorizations, to any country to which the said export laws, restrictions and regulations prohibit exportation.
- 15.2 Should the Products be used for military or dual-purpose usage, the Buyer undertakes to sign and obtain from the customer the signature of an end-user certificate or an International Import Certificate (IIC), whether it applies, in the form requested by the applicable authorities. The Buyer also agrees to sign any other end-user certificate whatsoever that may be required by foreign government.
- 15.3 Buyer shall timely inform Seller of any local rules or regulations which may restrict, technically, regulatory or otherwise, the deployment or operation of the Products or supply of the Services in Buyer's country and provide any reasonably required assistance in obtaining any license required therefor.
- 15.4 The purchase order may be cancelled without compensation by the Seller in case the applicable authorities reject the export license application. The Buyer is not entitled to claim liquidated damage for delay while the application for export license is pending.
- 16 ASSIGNMENT**
- 16.1 Buyer may not assign or otherwise transfer to a third party the benefits or obligations arising from the order, in whole or in part.
- 16.2 Seller may assign the order to an affiliate of Seller or to a third party in connection with the sale of the business of Seller or in the event of a change of control within the Seller, without having to obtain the Buyer's consent.
- 16.3 The order shall be binding and shall inure to the benefit of the legal successors of either party.
- 17 WASTE ELECTRICAL AND ELECTRONIC PRODUCTS (WEEE)**
- 17.1 If Seller is required by law to collect, treat, recover and dispose WEEE Products in an environmentally sound manner, Buyer shall arrange for and pay for the cost of collection and transportation of the WEEE Products to a party designated by Seller, at which point the title of the WEEE Products is transferred to the Seller. Radioactive and/or biological contaminated Products cannot be accepted by Seller and are exempted from this collection.
- 17.2 The Buyer shall ensure that WEEE Products remain intact in full due to import and transit restrictions or prohibitions, which must be respected by exporting parties.
- 17.3 In all cases the Buyer is responsible for the proper shipping documents and required transport permits prior to shipping.
- 18 GOVERNING LAW AND JURISDICTION**
- 18.1 All sales of Products and supplies of Services shall be exclusively governed by and construed in accordance with the laws of New York without recourse to its conflict of law principles. In the event of a conflict between these terms and conditions and public order provisions under any applicable

law, the latter shall prevail and the validity of the other clauses of these terms and conditions shall not be affected. The provisions of the 1980 United Nations Convention on Contracts for the International Sales of Goods and the United States Uniform Commercial Code shall not apply to any order.

18.2 Any dispute arising out of or in connection with the Sale shall be exclusively settled by a competent English speaking Court in the State of New York.

*END OF DOCUMENT*