

**1. APPLICABILITY:**

These terms ("Terms"), the accompanying Quote or Sales Order ("Order") and any document specifically referenced in the Order ("Referenced Documents") are the only terms which govern the sale of hardware ("Hardware"), software ("Software" and together with Hardware, "Products"), and training, services, and support related to Products (collectively, "Services") by Seller to Buyer. "Seller" means New Wave Design and Verification, LLC, dba New Wave Design, or its affiliate identified on the Order. "Buyer" means the buyer named on the Order. The Order, these Terms and the Referenced Documents (collectively, this "Agreement") make up the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement prevails over any of Buyer's general terms and conditions. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend this Agreement. Seller expressly rejects all additional or different terms in any of Buyer's forms or documents. Notwithstanding the foregoing, if a written contract signed by both parties is in existence and governs the sale of Products, the terms and conditions of that contract shall prevail to the extent they are inconsistent with this Agreement.

**2. DELIVERY:**

Seller shall use reasonable efforts to deliver the Products and perform the Services in material compliance with the dates set forth in Buyer's purchase order, if stated, or within a reasonable time after receipt of Buyer's purchase order. Unless otherwise agreed in writing by the parties, all sales are FCA Seller's facility in Minneapolis, MN ("Delivery Point") using Seller's standard methods for packaging and shipping such Products. Title and risk of loss for the Products pass to Buyer upon delivery of the Products to the Delivery Point.

**3. PRICE:**

Buyer shall purchase the Products and Services from Seller at the price ("Price") set forth in Seller's Order, as may be modified from time to time by written change order executed by both parties. The Price is 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 charges, costs, and taxes. When quoting to specifications, the Price only reflects material and labor shown in specifications – it does not include any items implied or not clearly specified. If any law or governmental decree, order, regulation or ruling under existing or future legislation prevents Seller from revising the Price, or nullifies or reduces the Price, Seller shall have the right to terminate this contract on written notice to Buyer.

**4. PAYMENT:**

Buyer shall pay all invoiced amounts due to Seller thirty (30) days from the date of Seller's invoice. Buyer shall make all payments in U.S. dollars. Buyer shall pay interest on all late payments at the lesser of the rate of one and one-half percent (1.5%) per month or the highest rate permissible under applicable law. Buyer shall not have any right of set-off against Seller. Seller has the right to access Buyer's creditworthiness and to require full or partial pre-payment in advance if, in Seller's sole discretion, the situation so requires. Seller reserves the right to change the method of payment hereunder on written notice to Buyer, and Buyer shall be deemed to have accepted such change unless it makes written objection to Seller within fifteen (15) days of such notice.

**5. INSPECTIONS AND ACCEPTANCE:**

Any inspections requested by or performed by Buyer, regardless of outcome, shall be at Buyer's cost. Software is deemed accepted thirty (30) days after receipt by Buyer. Hardware is subject to inspection and test by Buyer, is deemed accepted thirty (30) days after the date of delivery of such Hardware to Buyer's facility ("Delivery Date") unless rejected, and may be rejected if such Hardware fails to conform to Seller's warranty as set forth in Section 6.

**6. WARRANTIES:**

(a) *Hardware*. For a period of twelve (12) months from the Delivery Date (“Warranty Period”), Seller expressly warrants to Buyer that the Hardware will be free from defects in material and workmanship. (b) *Software and Services*. Unless the Referenced Documents include a separate software license agreement signed by both parties that states otherwise, Seller makes no warranty as to any Software or Services provided with the Hardware sold hereunder and all Software and Services are provided AS IS, WHERE IS, WITH ALL FAULTS. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 6, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. The warranties contained in this Section do not apply to: (i) Products or Services which have been subjected (by persons other than Seller) to negligence, misuse, misapplication, accident, damages by circumstances beyond Seller’s control, improper assembly or storage, or electrical or temperature stress; (ii) consumables, such as batteries, printer ribbons, or paper; (iii) Hardware that has been modified without the express written permission of Seller; (iv) Hardware on which Seller’s serial number has been removed, tampered with, or defaced; (v) revisions to Hardware due to Buyer requested design changes; (vi) Non-Seller Branded Products or changes to those products; or (vii) Buyer supplied parts, materials, or products, and defects caused thereby. Final determination of warranty eligibility shall be made by the New Wave Design RMA Administrator, 10260 Viking Dr., Ste. 250, Eden Prairie, MN 55344. No Seller agent, or employee, is authorized to make any modification, extension, or addition to this warranty, except by an express written document signed by the President of New Wave Design.

**7. TECHNICAL ADVICE:**

Any and all designs, plans, drawings, specifications, and all other technical and engineering services (“Technical Advice”) which Seller has provided or may provide to Buyer as part of the Order, including but not limited to Technical Advice regarding the Products or the project to which they relate, are furnished solely for the convenience of Buyer and its engineers. SELLER MAKES NO WARRANTIES OF ANY KIND FOR ANY TECHNICAL ADVICE PROVIDED BY SELLER TO BUYER. SELLER ASSUMES NO OBLIGATION OR LIABILITY FOR ANY TECHNICAL ADVICE GIVEN BY SELLER WITH REFERENCE TO THE USE OF PRODUCTS OR RESULTS WHICH MAY BE OBTAINED AND ALL SUCH ADVICE, IF GIVEN AND ACCEPTED, IS AT BUYER’S SOLE RISK.

**8. NON-SELLER BRANDED PRODUCTS:**

Non-Seller Branded Products that Seller resells may not be testable or repairable by Seller, and it may be necessary for Buyer to contact the original equipment manufacturer or the publisher for service or any warranty claims. Seller does not warrant, has no obligation to support, and shall have no liability for Non-Seller Branded Products. Section 6 does not apply to the sale and purchase of Non-Seller Branded Products. “Non-Seller Branded Products” means any third-party hardware, software, or service that Seller sells, but does not carry a Seller mark.

**9. DISCLAIMER FOR HIGH RISK APPLICATIONS:**

Unless specifically otherwise agreed in writing by Seller, Buyer represents and warrants that Products are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems, or any other high risk applications where failure of the Products could lead to loss of life or catastrophic property damage. Buyer shall indemnify and hold Seller harmless from any loss, cost or other damages, including attorneys’ fees and costs, resulting from Buyer’s breach of the provisions of this paragraph.

**10. SELLER SUPPLIED PARTS:**

Unless agreed by Seller in writing, all parts and materials required for the provision of any Products or Services will be supplied by Seller.

**11. END-USE VERIFICATION:**

Buyer acknowledges that it is ultimately responsible for verifying and validating the suitability and reliability of the Products or Services whenever the Products or Services are incorporated in Buyer's system or application, including the appropriate design, process, and safety level of such system or application. Further, Buyer shall protect against Product and Service failures when Products and Services are incorporated in a system or application, including providing back-up and shut-down mechanisms. Buyer shall defend, indemnify, release and hold Seller harmless from any and all claims, losses, damages, action, including lawsuits, arbitrations, and/or administrative actions, and expenses (including reasonable attorneys' fees) arising out of Buyer's incorporation of the Products or Services into Buyer's system or application, regardless of whether such claims are founded in whole or in part upon alleged or actual negligence of Seller.

**12. LIMITATION OF REMEDIES:**

During the Warranty Period, if the Hardware fails to conform to Seller's express warranties, Buyer shall (i) notify Seller in writing within 30 days after Buyer discovers or ought to have discovered the non-conformity and (ii) request a return merchandise authorization ("RMA") number from the RMA Administrator at (952) 224-9201 or [RMA@newwavedesign.com](mailto:RMA@newwavedesign.com). Buyer will either (i)(a) receive a RMA number to be permanently displayed on all shipping containers containing the non-conforming Hardware authorized for return and (b) return the non-conforming Hardware to Seller, freight prepaid, with a failure report attached, including a contact name, address, telephone number, email address, description of the problem, model, and serial number with each item of non-conforming Hardware; or (ii) receive notice that Seller will remedy the non-conforming Hardware without requiring its return by Buyer. Seller will not accept equipment for repair without an RMA number. Seller shall, in its sole discretion, either: (i) repair or replace the non-conforming Hardware (or the defective part) and return such Hardware to Buyer, freight prepaid (if applicable), or (ii) credit or refund the price of such Hardware at the pro rata contract rate. The terms of this Agreement will apply to any return material authorization purchase orders. Seller may from time to time improve, enhance, or modify the design of the Hardware covered by its warranty pursuant to general engineering change orders ("ECOs"). Seller will have the right, but not the obligation, at its discretion, to apply general ECOs to the warranted Hardware returned for repair without request or notice to Buyer. Buyer may elect to put Products on "Configuration Management Control", in which case no ECOs will be included without Buyer approval. THE REMEDIES SET FORTH IN THIS SECTION 12 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 6. Any warranty claim must be made in the time frame and subject to the foregoing provisions or will be deemed waived. Unless otherwise expressly provided herein, all rights and remedies provided herein are exclusive, and are in lieu of all other rights and remedies, in law or in equity.

**13. LIMITATION OF LIABILITY:**

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL, OR EXEMPLARY LOSSES, DAMAGES, OR EXPENSES ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR DELAY IN PERFORMANCE, LOSS OF REVENUE OR PROFITS, OR ANY OTHER TYPE OF ECONOMIC LOSS. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS AND SERVICES SOLD HEREUNDER. Seller's liability shall be limited to Buyer, and shall not extend to Buyer's customer or any other person or corporation.

**14. SOFTWARE LICENSE:**

Any Software (including documentation) previously developed by Seller or developed under or in connection with this Agreement, whether provided with the Hardware sold hereunder or provided separately, shall remain the property of Seller, and Seller shall be the exclusive owner thereof and shall retain title thereto. In connection with this Agreement, Seller grants to Buyer a perpetual non-exclusive and non-transferable license to use such Software solely on any related Hardware sold hereunder, or, if so specified, solely as outlined in the Order. Buyer shall have no other rights with respect to such Software, including, but not limited to, no rights to use the Software on other products or to copy, sell, transfer, reverse engineer, decompile, disclose, or display the Software unless the Referenced Documents include a separate software license agreement signed by Buyer and Seller that states otherwise. Buyer shall maintain, and ensure that its employees, consultants and affiliates maintain, the confidentiality of all Software (including documentation) in a manner consistent with the protection of Seller's rights herein. Any violation by Buyer of the terms of this or any other section herein shall be the basis for immediate termination of the above license.

**15. TITLE TO DESIGN:**

Seller owns and shall retain title to the design of the Products and any components thereof, any Technical Advice, and all proprietary rights related to such Products or components developed or sold as part of this Agreement. While Buyer shall have the rights to use all equipment or material delivered by Seller, except as limited in Section 14 above, nothing contained herein shall be deemed as a license to Buyer under any of Seller's patents, intellectual property or proprietary rights, and Buyer agrees that it will not infringe, question, challenge or in any way impair the validity of any patents, intellectual property, proprietary rights or trademarks of Seller pertaining to the Products and any related parts, equipment, materials or services sold hereunder. In connection with any Products, parts, materials, designs or equipment furnished by Buyer hereunder, Buyer hereby indemnifies Seller against any and all claims for patent or trademark infringement by use of such parts, materials, designs and equipment.

**16. AMENDMENTS AND CHANGES:**

This Agreement may only be amended or modified in a writing stating specifically that it amends this Agreement signed by an authorized representative of each party. To the extent that such changes alter Seller's time or cost for performance, Seller shall be entitled to an equitable adjustment under this Agreement. Stenographical or clerical errors in the specifications, drawings, Seller's proposal, and the Order are subject to correction by Seller. If Seller makes any design changes at Buyer's request, any costs incurred by Seller shall be quoted by Seller prior to making said changes, and said costs shall become the obligation of Buyer, even if not separately identified on the face hereof.

**17. DELAYS:**

If Seller's performance under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, employees, or mandated third-party suppliers, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer and Seller shall be entitled to an equitable adjustment to the Price, in each case, to the extent arising directly or indirectly from such prevention or delay.

**18. CANCELLATION, RETURNS:**

All orders are non-cancellable, non-returnable.

**19. INTERNATIONAL SALES:**

Products delivered hereunder are subject to U.S. export control laws and regulations. Buyer agrees to comply with all applicable U.S. export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2799, including the International Traffic in Arms Regulations (ITAR), 22 CFR 120-130 and the Export Administration Act, 50 U.S.C. §§ 2401-2420, including Export Administration Regulations, 15CRR 730774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Buyer agrees that it will not transfer any export-controlled item, data, or service, to include transfer to a foreign person employed by or associated with or under contract to Buyer or Buyer's lower-tier suppliers, without the authority of an export license or applicable exemption or exception. Buyer represents that it is registered with the Office of Defense Trade Controls as required by ITAR and it maintains an effective export/import compliance program in accordance with the ITAR. Buyer agrees that it will not export, re-export, or otherwise distribute the Products or any technical data related thereto, in violation of any export control laws or regulations of the United States.

**20. FORCE MAJEURE:**

Seller shall not be liable or responsible to Buyer, nor be deemed to have breached this Agreement, for any failure or delay in performing any term of this Agreement when and to the extent such failure or delay is caused by or results from circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities, terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, breakage or failure of machinery or apparatus, delay or failure of transportation, epidemic, lockouts, strikes or other labor disputes, or restraints or delays affecting carriers or inability or delay in obtaining adequate or suitable materials, telecommunication breakdown, or power outage. If, because of any such event, Seller is unable to supply the total demand for its goods to all customers, Seller may allocate its available supply of goods among itself and all of its customers, including those not under contract, on such basis as it determines to be equitable, without obligation to purchase similar goods from other sources.

**21. MISCELLANEOUS:**

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. The relationship between the parties is that of independent contractors and neither party has authority to bind the other party. This Agreement is for the sole benefit of the parties and their permitted successors and assigns. Both parties agree that any legal action arising out of this Agreement shall be brought in the federal courts of the United States of America located in Minnesota or the courts of the State of Minnesota located in Hennepin County, and consent to the personal jurisdiction of such court in any such action. The laws of the State of Minnesota govern this Agreement without giving effect to any choice or conflict of law rules. Waiver by Seller of any breach of any provision of this Agreement shall not constitute a waiver of any other breach or a waiver of such provision. Seller's failure to exercise any right or remedy arising from this Agreement shall not operate as a waiver thereof. If any term of this Agreement is illegal or unenforceable, such invalidity or illegality shall not affect any other term or provision of this Agreement. Provisions of this Agreement which by their nature should apply after termination or expiration of this Agreement will continue to apply. All communications under this Agreement shall be in writing to the addresses set forth on the face of the Purchase Order Confirmation or to such other address that may be designated by the receiving party in writing.