

Standard Terms and Conditions of Sale for VitalSensors Technologies LLC Products

1. CONTRACT:

All sales transactions are expressly subject to these terms and conditions. Modification or additions will be recognized only if accepted in writing by an officer of VitalSensors Technologies LLC (Seller) or an officially designated representative. Provisions of Buyer's Purchase Order or other documents that add to or differ from these Terms and Conditions are EXPRESSLY rejected. No waiver of these Terms and Conditions or acceptance of others shall be construed as failure of Seller to raise objections.

2. QUOTATIONS AND PUBLISHED PRICES:

Quotations automatically expire 30 calendar days from the date issued unless otherwise stated in the quotation and are subject to withdrawal by notice within that period. Seller reserves the right to extend such quotation up to 6 months from the date of issuance. Prices shown on the published price lists and other published literature issued by Seller are not unconditional offers to sell, and are subject to change without notice. Seller's prices for equipment, unless otherwise specified, do not include an allowance for installation and or final on site adjustment. Prices shall be subject to adjustment to those in effect at time of shipment. Project documents and quotations must not be duplicated or given to third parties with the Seller's consent.

3. REPAIR ORDERS:

In carrying out repair orders, Seller reserves the right to modify prices based on findings which become apparent during the repair order execution. Expenses for estimates of repair and maintenance or for expert instrument or process valuations shall be invoiced to Buyer.

4. TAXES:

Seller's prices do not include any applicable sales, goods and services, use, excise or similar taxes and the amount of any such tax which Seller may be required to pay or collect will be added to each invoice and paid by the Buyer unless the Buyer has furnished Seller with a valid tax exemption certificate acceptable to the taxing authorities prior to shipment. If, upon subsequent sales, use, excise, or similar tax audit, an exemption certificate, provided to Seller by Buyer is, through no fault of Seller, determined to be invalid, Seller will attempt to acquire a valid exemption certificate, notarized affidavit of exempt use or other necessary documentation from Buyer. If Buyer fails to furnish a valid exemption certificate, notarized affidavit or other necessary documentation, in a timely manner the previously unpaid sales, use or similar excise tax will be billed to and paid by the Buyer.

5. TERMS OF PAYMENT:

Unless explicitly agreed to elsewhere in writing, terms are 30% at time of order, 70% prior to shipment. Amounts past due are subject to a service charge of 1.5% per month (or fraction thereof) or maximum contract rate permitted by law. If Seller deems that by reason of the financial condition of the Buyer or otherwise, the continuance or production or shipment on the terms specified is not justified, Seller may require full or partial payment in advance. Payment shall be made in United States currency and remitted as set forth in the invoice

6. DELIVERY:

Delivery dates indicated in the contract documents are approximate and are based on prompt receipt of all necessary information regarding the equipment covered by the contract and down payment. Seller will use reasonable efforts to meet the indicated delivery dates, but cannot be held responsible for its failure to do so. Title to the equipment and risk of loss shall pass to Buyer upon delivery to a carrier at Seller factory. In the event of any delay in delivery caused by the Buyer, Seller will store and handle all items ordered at the Buyer's risk and will invoice the Buyer for the unpaid portion of the contract price, plus storage, insurance, and handling charges on or after the date which the equipment is ready for delivery. The invoice will be payable in full within 30 days from the invoice date. Seller has the right to make partial shipments and bill for those shipments. The buyer will make payment in accordance with terms referenced in Article 5 above.

7. SHIPPING AND HANDLING CHARGES:

Shipments are Ex Works Seller. Unless the Buyer elects a freight collect shipment, shipping charges plus the applicable Seller handling charge will be prepaid and billed as a separate item on the equipment invoice.

8. CHANGES:

Buyer may with the express written consent of Seller make changes in the specifications for equipment or work covered by the contract. In such event the contract price and delivery dates shall be equitably adjusted. Seller shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

9. CANCELLATION AND RETURN OF EQUIPMENT:

Undelivered parts of any order may be canceled by the Buyer only with the written approval of Seller. If the Buyer makes an assignment for the benefit of creditors, or in the event that Seller for any reason feels insecure about the Buyer's willingness or ability to perform, Seller shall have the unconditional right to cancel this sales transaction. In the event of any cancellation of this order by either party, the Buyer shall pay to Seller the reasonable costs and expenses (including engineering and technician expenses and all shipping costs and commitments to its suppliers and subcontractors) incurred by Seller prior to receipt of notice of such cancellations, plus Seller's usual rate of profit for similar work. The minimum cancellation charge shall be 15% of the contract price.

Products that are substantially customized for a Buyer's specific application and at Buyer request cannot be cancelled.

10. SECURITY INTEREST:

Buyer agrees to pay for the equipment according to Seller's payment terms and does hereby grant to Seller a purchase money security interest in the equipment until such time as it is fully paid. Buyer will assist Seller in taking the necessary action to perfect and protect Seller's security interest. In the event of a default by Buyer, Seller shall be entitled to any of the rights and remedies provided by law, including but not limited to repossession of the equipment.

11. DEFAULT:

Upon default and placing of the buyer's account for collection or repossession of equipment, the Buyer agrees to reimburse collection cost, legal fees, and court cost incurred by Seller in connection therewith.

12. WARRANTIES:

ABSENT A SEPARATE WARRANTY ISSUED TO BUYER BY SELLER, SELLER EXPRESSLY WARRANTS THE EQUIPMENT MANUFACTURED AND THE SERVICES PERFORMED BY IT TO BUYER SOLELY AS SET FORTH HEREIN. SELLER DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). THESE WARRANTIES MAY BE TRANSFERRED TO A SUBSEQUENT PURCHASER OF THE EQUIPMENT ONLY WITH THE PRIOR WRITTEN CONSENT OF SELLER. IN ADDITION, THE FOLLOWING SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER FOR ANY BREACH BY SELLER OF ITS WARRANTY HEREUNDER.

A. PRODUCT –

Seller warrants that the equipment covered by this warranty will be free from defects in workmanship and materials, under normal use, for a period of 12 months from the date of shipment to Buyer. Should any such defects be found and reported during the term of the warranty, Seller will, at its option, grant a fair price reduction or correct such defects, furnishing replacement parts and labor free of charge to Buyer. Seller will also furnish travel up to 80 kilometers (50 miles) from the nearest Seller service representative or authorized Seller service provider free of charge during the warranty period.

B. SOFTWARE –

Seller warrants that software developed by Seller will perform substantially the functions described in the software documentation when properly installed. Seller does not warrant that the software is error-free, that Buyer will be able to operate the software without interruption, or that the software will be free of vulnerability to intrusion or attack. The warranty period will be the same as the warranty period for Seller equipment within which the software is embedded. If the software is not embedded within Seller equipment, the terms and conditions of the respective end user license agreement of Seller shall apply exclusively. If no end user license agreement is applicable, the warranty period will be 90 days from the date of purchase by Buyer.

C. SERVICE –

Seller warrants that services will be performed in a workmanlike manner in conformity with standard industry practice. Should any nonconformity be detected within 30 days after the work is completed and prompt notification is made by Buyer in writing to Seller, Seller will supply the necessary service, direction or consultation to correct the nonconformity.

D. GENERAL –

The foregoing warranties are further subject to the following general conditions:

- (1) Buyer giving immediate notice in writing of any defects that have occurred. Buyer shall prove immediately the presence of a defect; in particular he shall make available immediately to Seller all material, installation drawings and data in his possession.
- (2) Consumables, accessories, normal wear and tear, wear parts and perishables are expressly excluded from the foregoing warranties.

(3) If Buyer requests the performance of warranty work provided for under the foregoing warranties during other than normal Seller work periods, Buyer will be required to pay for all premium time.

(4) These warranties will not apply where Seller's equipment and/or software has been subjected to: accident, alteration, misuse, abuse, failure on the part of Buyer to ensure proper storage, operation and/or maintenance, installation or servicing by other than Seller authorized personnel, the addition or supply of equipment not approved for incorporation into Seller's product, integration into the Buyer's environment, or Buyer/ third party supplied software or interfacing.

(5) Seller's warranty obligation shall not extend to any defects due to assembly and installation work not undertaken by Seller, inadequate equipment, or due to non-compliance with installation requirements, use of non-approved process connections and operating conditions, overloading of parts in excess of design values in Seller's product specifications, negligent or faulty handling or the use of inappropriate materials, nor for defects in materials attributable to material supplied by the buyer. Nor shall the Seller be liable for damage due to acts of third parties or excess voltages and chemical influences.

(5) Products of other manufacturers sold by Seller as such are warranted by Seller solely to the extent of any remaining warranty provided by the original manufacturer.

(6) In the event equipment is repaired by Seller, the performance of such repair work will not extend existing nor generate new warranty coverage for the equipment as a whole or for those parts not repaired or replaced by Seller.

E. METHODS OF CORRECTION OF DEFECTS DURING WARRANTY –

To correct defects Seller may attempt to diagnose and resolve the defect over the telephone or electronically. Certain equipment contains remote support capabilities for direct problem reporting, remote problem determination, and resolution with Seller. When Buyer contacts Seller for warranty work, it must follow the problem determination, resolution and procedure that Seller specifies. At any time following or to assist in problem determination, Seller may require return of the part or product to depot for service. If Seller determines on-site work is required, a service technician will be scheduled for on-site work. If Buyer gives notice of a defect to Seller and requests Seller for on-site work when the defect could have been remedied remotely, or if Seller responds to Buyer's notice of defect and no defect is found for which Seller is liable, Seller shall be entitled to compensation for any work performed and costs it has incurred as a result of Buyer's request. Seller encourages Buyer to use available remote support technologies. Failure to install and use available remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution may result in increased response-time and additional costs to Buyer.

12. INDEMNITY:

Seller agrees to indemnify Buyer and hold it harmless from and against any direct loss suffered and any direct liability to third parties whenever such loss or liability is directly due to bodily injury (including death) to any third party or direct damage to any third party property occurring in the course of, and caused exclusively by, any negligent act or omission by Seller on the premises of Buyer that occurs in the performance of the work contemplated herein. This indemnity shall include reasonable legal fees and settlements of claim or suit. Buyer shall provide prompt written notice to Seller of any actual or anticipated claims against it that might trigger the foregoing indemnity; failure to do so waives Buyer's right to indemnification hereunder. Following such written notice, Seller shall have the sole and exclusive right to manage the defense of any indemnified claims and shall be authorized to settle or compromise such claims at its sole and exclusive discretion. Buyer shall cooperate in the defense of all indemnified claims as deemed necessary by Seller.

13. PATENT INFRINGEMENT:

Seller shall defend any suit or proceeding brought against Buyer so far as the same is based on a valid claim that any Equipment of Seller's design furnished hereunder, or any part thereof, constitutes an infringement of any applicable patent, if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of the same and if such alleged infringement is not the result of a design or other special requirement specified by Buyer or the result of the application of the use to which such Equipment is put by Buyer or others. Seller will pay all damages and costs finally awarded in such suit or proceeding against Buyer provided that Seller has the sole and exclusive right to defend, settle or compromise any suit or proceedings and Buyer takes no action that would materially detract from Seller's ability to conduct an effective defense, settlement or compromise. In such case Equipment or part in such suit held to infringe any such patent and the use thereof is enjoined, Seller will at its expense either, at its option; (a) obtain for Buyer the right to continue using such Equipment or part or; (b) replace the same with non infringing Equipment, or; (c) modify the same so that it becomes non infringing or; (d) remove said Equipment and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of Seller to Buyer for patent infringement.

14. REGULATORY LAWS AND OR STANDARDS:

The performance of the parties hereto is subject to the applicable laws of the United States or Canada, depending on the location of delivery of the product or service. Seller takes reasonable steps to keep its products in conformity with various nationally recognized standards and such regulations, which may affect its products. However, Seller recognizes that its products are utilized in many regulated applications and that from time to time standards and regulations are in conflict with each other. Seller makes no promise or representation that its product will

conform to any federal, provincial, state or local laws, ordinances, regulations, codes or standards except as particularly specified and agreed upon for compliance in writing as a part of the contract between Buyer and Seller. Seller prices do not include the cost of any related inspections or permits or inspection fees.

15. INTELLECTUAL PROPERTY:

The sale and delivery of Seller's equipment and/or software to Buyer will in no way transfer to Buyer any right of ownership in any patents, copyrights, trademarks, technologies, designs, specifications, drawings, or other intellectual property incorporated into the equipment and/or software.

16. DISCLAIMER:

OF DAMAGES: IN NO EVENT SHALL SELLER BE LIABLE FOR ANY TYPE OF SPECIAL CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. Such damages shall include but not be limited to loss of profits or revenues, loss of use of the equipment or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs or claims of Buyer's customers or contractors for such damages. Buyer agrees that in the event of a transfer, assignment, or lease of the equipment sold hereunder Buyer shall secure for Seller the protection afforded to it in this paragraph.

17. LIMITATION OF LIABILITY:

Seller will not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omissions of Buyer and third parties, whether negligent or otherwise. In no event will Seller's aggregate liability for any and all types of damages or losses related to this agreement or the products or services sold or delivered pursuant hereto exceed the cost of the item giving rise to the claim, whether based in contract, warranty, indemnity, or tort (including negligence). Any suit arising hereunder must be commenced within one year from the date on which the cause of action accrues.

18. NO RESPONSIBILITY FOR GRATUITOUS INFORMATION OR

ASSISTANCE: If Seller provides Buyer with assistance or advice which concerns any parts, products, service supplied hereunder or any system or equipment in which any such part product service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Seller to any liability, whether based in contract warranty, tort (including negligence) or otherwise.

19. INTERPRETATION:

Should any term or provision contained in the contract contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be construed in the same manner as if such term or provision had not appeared therein.

20. INSURANCE:

Upon request, Seller shall provide evidence of insurance in accordance with its standard coverage and limits. Seller does not provide third parties direct access to its insurance or give additional rights to its insurance, such as naming additional insured parties.

21. FORCE MAJEURE:

The inability of Seller to fulfill its obligations required under these terms and conditions resulting from defaults or delays caused by conditions beyond Seller's reasonable control including, but not limited to strikes, insurrection, acts of God, war, terrorist activities, emergencies, shortages or unavailability of materials, weather, change in law or other similar causes, will extend the period for the performance of the obligations for the period equal to the period(s) of any such delays(s) and Buyer will not have the right to termination; provided that Seller will continue to perform to the extent feasible in view of such force majeure.

22. EXPORT CONTROL:

Buyer acknowledges that the equipment may include technologies and software that are subject to export control regulations in Europe or the United States of America or countries in which the equipment is delivered or used. The Buyer is solely responsible for adherence to these restrictions in case the Buyer exports or re-exports the equipment and the Buyer agrees to indemnify and hold Seller harmless from, or in connection with, any violation of such export restrictions by Buyer, or its employees, consultants, agents, or customers.

23. GOVERNING LAW AND PLACE OF JURISDICTION:

The legal relationship between Buyer and Seller shall be governed by the laws of the United States of America. Exclusive place of jurisdiction shall be Boston, Massachusetts. Seller however reserves the right to initiate court proceedings against the Buyer at any other court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods is explicitly excluded