

JP3 Capital Purchase Terms and Conditions of Sale

JP3 TERMS AND CONDITIONS OF SALE

1. SCOPE. The terms and conditions of sale contained herein will apply to all quotations and offers made and purchase orders accepted by JP3 Measurement, LLC ("JP3"). These terms and conditions will become a binding contract when accepted by commencement or performance ("Contract"). This Contract can only be accepted on the terms set forth and no alterations or additions will be incorporated without the express written consent of JP3. JP3's failure to object to provisions contained in any communication from the customer ("Customer") will not constitute acceptance of those provisions. All orders must be accepted by JP3. This Contract will apply unless Customer has signed a separate written purchase agreement with JP3 for the ordered Products, in which case the separate written purchase agreement will govern.

2. PRICE. Customer will pay, and all prices are exclusive of, sales, use, excise, withholding or any other taxes applicable to the sale, use, license or delivery of the products ("Products") and services ("Services") set forth on the JP3 order form sold pursuant to this Contract, or any charges for shipping, insurance or fees or commissions. Any third party products provided by JP3 are subject to and provided only pursuant to such third party terms, conditions and warranties. All prices are in United States dollars.

3. QUOTATIONS. All quotations and sales are FOB Origin from JP3 or its subcontractors. Unless otherwise agreed in writing, transportation, insurance, express charges, special packaging, freight, customs, duties, installation costs and other charges are not included in quotations or Product prices. Unless otherwise agreed in writing, quotations are valid for 30 days from the date of quotation.

4. TERMS OF PAYMENT. Unless otherwise stated in the accepted order, all amounts due to JP3 must be paid within 30 days after the date of JP3's invoice and all payments are to be in United States dollars. Pro-rata payment will be due as deliveries are made. If JP3 is required to bring legal action to collect delinquent accounts, then Customer will pay reasonable attorneys' fees and costs of suit. JP3 may charge the lesser of 1.5% per month or the maximum lawful rate on overdue amounts.

5. TITLE AND DELIVERY. Customer assumes title (except for Software) and the risk of loss or damages upon delivery EXW from JP3 or its subcontractors/agents. Customer will take the steps necessary to maintain the Products in proper condition and will insure its interest in the Products, with JP3 as a loss payee, for as long as any amounts remain owing to JP3 for the Products. The time for delivery will be established by the parties after the date of acceptance of the order. Partial deliveries will be permitted. JP3 will use commercially reasonable efforts to ship by the method specified and the time requested by Customer. Additional charges may apply to comply with Customer's delivery method. JP3 will not be liable for any delay in delivery of the Products or Services. Cancellation, modification, suspension, or delay in shipment of Customer's order will not be accepted, unless agreed to in writing on terms which will fully indemnify and reimburse JP3 against loss; such indemnity to include recovery of all direct costs incurred, including normal indirect and overhead charges and a normal profit.

6. ACCEPTANCE AND INSTALLATION. JP3's tender of Products and Services to Customer or Customer's agent will constitute acceptance of such Products and Services by Customer unless notice of defect or nonconformity is received by JP3 in writing within 30 days of receipt of the Products and Services at Customer's designated receiving address, provided that, for Products for which JP3 agrees in writing to perform acceptance testing after installation, completion of such testing by JP3 will constitute acceptance of the Products by Customer. Notwithstanding the above, any use of a Product by Customer, its agents, employees, contractors or licensees, for any purpose after its receipt, will constitute acceptance of the Products by Customer. JP3 may repair or, at its option, replace defective or nonconforming parts after receipt of notice of defect or nonconformity. If JP3 is to install the Products, and installation is delayed due to Customer's inability to provide adequate facilities or utilities, or due to its failure to comply with JP3's reasonable pre-installation instructions, JP3 may charge Customer for labor and other expenses involved in making multiple or follow-up service calls.

7. LIMITED WARRANTY AND DISCLAIMER

a. JP3 warrants to Customer that for 12 months from the date of shipment to Customer of the Product (hardware and software), the Product will be free from defects in material and workmanship under normal use and will substantially conform to its specifications. In no event does JP3 warrant that any software provided with or embedded in a Product ("Software") is error-free or that Customer will be able to operate the Software without problems or interruptions.

b. If, under normal and proper use, a defect or non-conformity appears in a warranted Product or Software during the applicable warranty period and Customer promptly notifies JP3 in writing of such defect or nonconformance and follows JP3's instructions regarding return of such Product, then, at no charge to Customer, JP3 will, at its option, either (i) repair, replace or correct the same in accordance with JP3's support services policies, or (ii) provide a refund of the purchase price against return of the Product. Any repaired or replaced Product is warranted for the longer of 90 days from the date of shipment of the repaired or replaced Product or the remaining Product warranty period. The foregoing warranties and remedies do not apply to consumable goods delivered hereunder which are provided with a pass-through warranty from JP3's suppliers. This subsection sets forth Customer's sole remedies and JP3's entire liability for breach of warranties stated in this Section 7.

c. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7, PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND JP3 MAKES NO OTHER WARRANTY OR REPRESENTATION, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

d. Customer assumes all responsibility and liability for its use of the Products and Services and will indemnify and hold harmless JP3 from damages, liabilities, settlements, costs and legal fees incurred by JP3 arising out of Customer's use of the Products and Services.

e. No written or oral statement made about any Product or Service by an employee or agent of JP3 will be effective to extend a warranty for the Products or Services.

f. Customer may purchase support for the Products pursuant to JP3's standard terms, conditions and prices.

8. LIMITATION OF LIABILITY. NEITHER JP3 NOR ITS SUPPLIERS WILL BE LIABLE TO CUSTOMER WITH RESPECT TO ANY SUBJECT MATTER OF THIS CONTRACT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, AND WHETHER OR NOT JP3 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, (A) FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST DATA, OR (B) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (C) FOR LOSS OR CORRUPTION OF DATA OR INTERRUPTION OF USE, OR (D) FOR ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE FEES PAID TO JP3 FOR THE ORDER FROM WHICH THE CLAIM AROSE.

9. PROPRIETARY RIGHTS

- a. JP3 and its licensors retain the intellectual property rights in and to all Products, Services and related information and materials. Products and parts thereof (excluding Product hardware ("Hardware")), Software (and all materials containing or embodying Software), drawings, sketches, information, designs and manuals ("Materials") furnished to Customer will be and remain JP3's property and may not be copied or duplicated in any manner or submitted to any third party, for examination or otherwise, without JP3's prior written consent.
- b. All data generated by Customer's use of the Software licensed hereunder ("Data") will be owned by JP3. JP3 will not disclose such Data in a way that identifies it specifically with Customer. JP3 hereby grants to Customer a perpetual and non-exclusive license to use such Data in connection with Customer's business.
- c. For a period of five years following initial disclosure of any JP3 confidential information ("Information"), Customer will (i) hold Information in confidence, (ii) not disclose Information to third parties, and (iii) not use any Information for any purpose except as authorized hereunder. Customer will treat all Information with at least the same degree of care that it uses to protect its own confidential and proprietary information, but with no less than a reasonable degree of care under the circumstances. Because damages alone may not be adequate compensation for loss of Information, JP3, in addition to any other legal and equitable rights it may have, will be entitled to an injunction against the breach or threatened breach of this Section by Customer.

10. LICENSE GRANT

- a. Subject to the terms and conditions of this Contract, JP3 grants Customer a non-exclusive, non-transferable, and royalty-free license for one year from the date of sale to Customer of the Product, without the right to sublicense, to use the Software on the Hardware with which it was provided or on which it was embedded when delivered to Customer solely for Customer's internal use.
- b. The license granted herein is granted solely to Customer, and not to any affiliate or customer of Customer. The license granted herein does not authorize Customer (nor may Customer allow any third party) to: (i) copy or distribute the Software; (ii) allow third party access to the Software, except Customer's agents and representatives for whom Customer is responsible; (iii) decompile, disassemble, reverse engineer, translate, convert or apply any procedure or process to the Software in order to ascertain, derive, and/or appropriate for any reason, the source code or mathematical models for the Software (except to the extent that such acts may not lawfully be prohibited) or any trade secret information or process contained in the Software; (iv) modify, incorporate into or with other software, or create a derivative work of any part of the Software; (v) lease or lend the Software; (vi) disclose the results of any benchmarking of the Software, or

use such results for Customer's own competing software development activities, without prior written consent of JP3; or (vii) attempt to circumvent any usage limits or other license, timing or restrictions that are built into the Software.

c. The Software is licensed and not sold. Customer's rights in the Software are limited to those expressly granted in this Section 10. JP3 reserves all rights and licenses not expressly granted to Customer under this Section 10.

11. MISCELLANEOUS

a. Customer is responsible for timely obtaining all necessary governmental permits, licenses, approvals and consents in connection with the import and use of the Products and Services in Customer's country or the country to which the Products are shipped or Services provided.

b. This Contract is governed by the laws of the State of Texas, and the United States, without reference to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Contract. The sole jurisdiction and venue for all legal actions relating to this Contract will be the State and Federal courts in Travis County, Texas. Both parties consent to the jurisdiction of such courts with respect to any such actions and agree that process may be served in the manner allowed by Texas law. In any action or proceeding to enforce rights under this Contract, the prevailing party will be entitled to recover costs and attorneys' fees.

c. If a court of competent jurisdiction finds any provision of this Contract invalid or unenforceable, that provision of the Contract will be enforced to the maximum extent permissible and the other provisions of this Contract will remain in full force and effect.

d. The parties are independent contractors.

e. Customer will not export or re-export the Products, Services or related documentation or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations.

f. No modification or amendment of any provision of this Contract will be effective unless in writing and signed by the parties' authorized representatives.

g. The failure of either party to enforce at any time any of the provisions of this Contract will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of either party to enforce each such provision thereafter. The express waiver by either party of any provision of this Contract will not constitute a waiver of any future obligation to comply with such provision.

h. This Contract and the rights hereunder are not transferable or assignable by Customer (and any attempted assignment will be void) without the prior written consent of JP3, except to a person or entity who acquires all or substantially all of the assets or business of Customer, whether by sale, merger or otherwise. JP3 may assign or transfer this Contract without Customer's consent. Subject to the foregoing, this Contract will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

i. JP3 will not be liable to Customer or any of its customers for any loss, expense or damage due to delays in delivery of Products or Services caused by or resulting from any act of God, riot, fire, explosion, accident, flood, sabotage, war, inability to obtain fuel, power, raw materials or parts, embargo, receipt by JP3 of orders from all sources exceeding JP3's then-scheduled delivery or production capacity, or governmental laws, regulations, or orders, lockouts, strike or labor trouble, actions, or inaction of Customer, or any cause or occurrence which is beyond the reasonable control of JP3.

j. These terms and conditions, JP3's order form for Products, and any signed nondisclosure agreement between the parties, if any, will constitute the entire agreement between the parties for the subject matter contained herein.

JP3 Terms and Conditions of Sale, updated June 2014.