



ZPE SYSTEMS TERMS AND CONDITIONS OF SALE

NOTE: These Terms and Conditions of Sale are superseded where contracts are currently in place with distributors, resellers, and/or original equipment manufacturers (OEMs), or in where a Master License Agreement (MLA) is already in place with the Buyer.

These Terms and Conditions are effective as of the Effective Date and are made between ZPE Systems, Inc. ("Seller") and the customer, person, or entity purchasing goods or services ("Buyer") (collectively "Parties") who hereby agree as follows:

1. Definitions.

1.1 "Agreement" refers to these Terms and Conditions, any price list or schedule, quotation, acknowledgment, or invoice from Seller relevant to the sale and license of the Goods and all documents incorporated by specific reference herein or therein, including the Master License Agreement.

1.2 "Buyer" refers to the customer, person, or entity purchasing Goods from the Seller.

1.3 "Goods" means any goods or services offered by Seller.

1.4 "Seller" means ZPE Systems, Inc.

1.5 "Software" means licensing software and/or firmware which is pre-loaded or to be loaded into Goods sold by Seller to Buyer.

2. **Terms of Sale.** This Agreement constitute the complete and exclusive terms of the sale between Buyer and Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of the terms contained in this Agreement. Buyer's receipt and use of the Goods unequivocally show Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.
3. **Price.** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods shall remain in effect for thirty (30) days after the date of Seller's quotation or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment of the Goods is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods to Seller's price for the Goods at the time of shipment. All prices and licensee fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Rebates or refunds for distributor stock on hand cannot be allowed in case of price decline. Seller will not accept orders for Goods to be shipped on a consignment or guaranteed sale basis.
4. **Taxes.** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, shall be for Buyer's account and shall be added to the price.
5. **Payment.** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this and/or other Agreements with Buyer in the event Buyer fails to make any payment when due, which other Agreements Buyer and Seller hereby amend accordingly. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Goods theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries. Buyer hereby grants Seller a security interest in all Goods sold to Buyer by Seller, which security interest shall continue until all such Goods are fully paid for in cash, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.
6. **Shipment and Delivery.** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Risk of loss and legal title to the Goods shall transfer to Buyer for sales in which the end destination of the Goods is outside of the United States immediately after the Goods have passed beyond the territorial limits of the United States. For all other shipments, risk of loss for damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by carrier at Seller's shipping point. All shipments are F.O.B. Seller's shipping point, or as otherwise determined by Seller. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.
7. **Patents and Copyrights.** Subject to the limitations set forth in the Master License Agreement, Seller warrants that the Goods sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement, or compromise of any such allegation of infringement. Seller's warranty as to use patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions (i) of such Goods, or (ii) of any combination of Goods acquired from Seller in a system designed by Seller. In the event such Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the Agreement as to future deliveries of such Goods, without liability.
8. **Software.** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, nontransferable license, with no right to

grant sublicenses, to install and use the Software for use by Buyer and Buyer's authorized users. The Software shall be furnished to, and used by, Buyer pursuant to Seller's applicable license Agreement, the terms of which are incorporated herein by this reference.

9. **Excuse of Performance.** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.
10. **Cancellation.** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive. Unless otherwise agreed in writing by Seller, orders under this Agreement may not be canceled by Buyer for any reason.
11. **Changes.** Seller reserves the right to change designs and specifications for the Goods and/or Software without prior notice to Buyer, except with respect to Goods being made to order for Buyer. Seller shall have no obligation to install or make such change in any Goods manufactured prior to the date of such change.
12. **Nuclear/Medical.** GOODS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT, AIRCRAFT OPERATION, AIR TRAFFIC CONTROL AND RELATED APPLICATIONS. Buyer accepts goods and services with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.
13. **Assignment.** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.
14. **Attorneys' Fees.** Buyer agrees that Buyer shall be obligated to pay to Seller promptly on demand all costs, charges and expenses, including but not limited to reasonable attorneys' fees and costs, incurred or expended by Seller arising out of or in any way pertaining to this Agreement in connection with any action or proceeding, whether or not there is a lawsuit. This includes, subject to any limits under applicable law, Seller's attorneys' fees, costs, and related expenses (such as expert witness fees, investigation fees, inspection fees, and the like) incurred by Seller in state court actions and/or proceedings under Title 11 of the United State Code (including without limitation efforts to modify or vacate any automatic stay, objections to claims, or injunctions), and appeals. Buyer also will pay all of Seller's court costs, in addition to all other sums provided by law.
15. **Dispute Resolution / Judicial Reference.**

15.1 Other than the exercise of other provisional remedies (any of which may be initiated pursuant to applicable law), any controversy, dispute or claim (each, a "Claim") between the parties arising out of or relating to this Agreement, will be resolved by a reference proceeding in California in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure ("CCP"). Venue for the reference proceeding will be in the Superior Court or Federal District Court in the County of Alameda, California (the "Court").

15.2 The referee shall be a retired Judge or Justice selected by mutual written agreement of the parties. If the parties do not agree, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. The referee shall be appointed to sit with all the powers provided by law. Each party shall have one peremptory challenge pursuant to CCP §170.6. Pending appointment of the referee, the Court has power to issue temporary or provisional remedies.

15.3 All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

15.4 The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding which disposes of all claims of the parties that are the subject of the reference. The referee's decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

15.5 If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or Justice, in accordance with the California Arbitration Act §1280 through §1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

16. **General Provisions.** These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or Agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California, USA, excluding its choice of law rules. Exclusive jurisdiction and venue for any lawsuits brought by either party arising from this Agreement or related to transactions under this Agreement shall be in the courts of Alameda County, California, USA. In any event, this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued.
- 16.1 **Installation.** Unless otherwise agreed to in writing by the parties, Seller shall have no responsibility for installing, configuring, or maintaining the Goods.
- 16.2 **Documentation.** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.
- 16.3 **Seller's Compliance with Certain Laws.** The Goods shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and Executive Order 11246.
- 16.4 **Buyer's Compliance with Laws.** In connection with the transactions contemplated by this Agreement, Buyer is familiar with and shall fully comply with all applicable laws, regulations, rules and other requirements of the United States and of any applicable state, foreign and local governmental body in connection with the purchase, receipt, use, transfer and disposal of the Goods.
- 16.5 **Export/Import.** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods and Services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods in violation of such applicable laws, regulations, orders or requirements.