

## **1.0 DEFINITIONS**

- 1.1 "Buyer" refers to Sensoronix, Inc. that has placed an Order with the Seller.
- 1.2 "Seller" means the person, firm or company to which the Order is addressed.
- 1.3 "These Conditions" means the standard terms and conditions of purchase set out herein and shall include any special terms and conditions attached to or set out in the Order between the Buyer and the Seller.
- 1.3 "Contract" means the agreement for the sale and purchase of the Goods and/or the supply and acquisition of the Services which shall comprise of the Order (Including all its attachments), these Conditions, the Specifications and the Seller's acceptance.
- 1.4 "Goods" means the goods (including any part(s) thereof) described in the Order.
- 1.5 "Order" means the Buyer's purchase/works order (including all enclosures and attachments) for the supply of the Goods and/or Services
- 1.6 "Price" means the price of the Goods and/or the charge for the Services described in the Order.
- 1.7 "Services" means the services described in the Order.
- 1.8 "Specification" means specifications for the Goods and/or Services which includes any purposes, functions, quality, performance standards, scope of works, plans, drawings, patterns, samples, data and/or other information relating to the same.
- 1.9 "Acceptance Test" means the test referred to in Clause 7.1.
- 1.10 "Acceptance Test Certificate" means the test certificate referred to in Clause 7.2.
- 1.11 "Articles" means the product, component, part or item on which Services are to be performed.
- 1.12 Any reference to any of the above words and expressions shall, where the context allows, be deemed to also include a reference to every and any part or unit of the objects or matters represented by such words and expressions.
- 1.13 Words importing the singular shall include the plural and vice versa.
- 1.14 The headings used herein are for convenience only and shall not affect the interpretation of this Contract.

## **2.0 BASIS OF PURCHASE**

- 2.1 The Order constitutes an offer to purchase the Goods and/or Services described therein based on these Conditions.
- 2.2 The Order may be revoked at any time by the Buyer prior to acceptance by the Seller.
- 2.3 Upon acceptance by the Seller, the Order shall constitute a binding contract between the Buyer and Seller. No variation to the Order or these Conditions shall be binding unless agreed in writing between the Buyer and Seller.
- 2.4 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

## **3.0 SPECIFICATIONS AND OBLIGATIONS**

- 3.1 The quantity, quality and description of the Goods and/or the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification. Goods shall be new and have not been used for any other purposes except the performance of Acceptance Tests (if any) prescribed in these conditions.

- 3.2 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 3.3 The Goods shall be packed and marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition.
- 3.4 For the purpose of the Contract, the Seller, its employees, agents and subcontractors shall implement the provision of the Workplace Safety & Health Act and the Regulations and Codes of Practice issued thereunder when working at the Buyer's premises or Buyer's designated premises.
- 3.5 If Goods are described by their part numbers in the Order, the Seller shall ensure that there has been no change in the specifications/characteristics of the Goods described by a particular part number and that any such changes are accompanied by part number revisions and such revisions shall be made known to the Buyer when the Seller receives the Order. The Buyer reserves the right to cancel the Order and return the Goods if there has been a change in specifications/characteristics of any Goods were not made known to the Buyer at the time an Order is made.
- 3.6 In performing its obligations under the Contract, the Seller shall comply with all applicable statutory requirements and regulations, including without limitation, provisions of any applicable Strategic Goods Control or Defense Trade Agreement/Act/Law.

#### **4.0 DELIVERY**

- 4.1 Where the Seller is an overseas supplier, the Goods shall be delivered in accordance with the instructions set out in the Order. In these Conditions "INCOTERMS" means the international rules for the interpretation of trade terms as set out in ICC Publication No. 715E in force with effect from 1 January 2011. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of INCOTERMS shall have the same meaning in these Conditions but if there is any conflict between the provisions of INCOTERMS and these Conditions, the latter shall prevail.
- 4.2 Where Goods are shipped, clean original bill(s) of lading and other shipping documents shall be forwarded promptly by the Seller to the Buyer. Shipping shall be routed in accordance with instructions from the Buyer.
- 4.3 The Buyer may change the delivery schedules from time to time by giving reasonable prior written notice to the Seller.
- 4.4 The Buyer will have no obligation to pay for Goods delivered in excess of the quantities specified in the delivery schedules.
- 4.5 The Buyer is entitled to reject any Goods delivered or Services performed which are not in accordance with the Contract and shall not be deemed to have accepted any Goods or Services until the Buyer has had a reasonable time to inspect or verify them following delivery or completion or, where any defect would not be apparent, within a reasonable time after any latent defect in the Goods or Services has become apparent eg upon installation or use of the Goods or Articles.
- 4.6 The Seller shall provide the Buyer in good time with any and all information necessary or required or reasonably requested by the Buyer to enable the Buyer to accept delivery of the Goods and/or performance of the Services.
- 4.7 If the Goods are to be delivered, or the Service performed, by installments, the Contract will be treated as a single contract and not severable. The Buyer shall be under no obligation to pay for any part of the Goods or Services until full and complete delivery or performance is made or given.
- 4.8
  - (i) The time of delivery for the Goods or performance of the Services shall be of the essence. If the Seller fails to deliver any of the Goods and/or fails to complete the Services by the scheduled date, the Buyer shall (in addition to any other remedies which it may have under the Contract or otherwise) have the right to deduct from the Price or require the Seller to pay, as liquidated damages a sum calculated at the rate of 0.1% of the Price of the Goods and/or Services so delayed for each day which may elapse between the date of scheduled delivery and the actual date of delivery, up to a maximum of 10% of the Price of the Goods and/or Services so delayed.

AND/OR

(ii) by giving 30 days' notice to cancel all or any such items of the Goods and/or Services which have not been accepted by the Buyer (regardless of whether or not the same is due to be delivered or completed) without being liable therefore in damages and obtain the same from other sources and all costs (including Buyer's costs in sourcing for alternative supply and Price increases) incurred thereby may, at the Buyer's option, be deducted from any monies due to or may become due to the Seller (whether under the Contractor otherwise) or shall be recoverable as damages

PROVIDED the time period for calculating liquidated damages payable under sub-para (i) for delay shall cease with respect to Goods or Services cancelled under sub-para (ii) at the end of the 30 days cancellation notice.

Upon cancellation by the Buyer under sub-para (ii), all Articles on which the cancelled Services were to be performed shall forthwith be returned to the Purchaser and all payment (including advance payment) made towards the Price of Goods and Services cancelled shall be refunded forthwith to the Buyer.

## **5.0 RISK AND PROPERTY**

- 5.1 Risk of damage to or loss of the Goods shall pass to the Buyer only upon delivery to the Buyer in accordance with the Contract. The Seller shall be responsible for any loss or damage occurring in transit whenever the Seller is obliged to deliver the Goods. The Seller will replace or repair free of charge Goods lost or damaged in transit.
- 5.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, in which event, property shall pass to the Buyer upon payment .
- 5.3 Any Article, equipment or material furnished by the Buyer, or paid for either partially or wholly by the Buyer shall at all times remain the property of the Buyer. The Seller shall use such equipment or material solely for the purpose of fulfilling the Buyer's orders. Such Article, equipment or material shall, while in the custody of the Seller, be held at the Seller's risk and shall unless otherwise agreed, be insured by the Seller in the joint names of the Buyer and the Seller at the Seller's expense for an amount equal to the replacement value of the Article, equipment or material. The Seller shall upon the cancellation, termination or completion of the Order or, as and when so requested by the Buyer, promptly return such equipment or materials in good condition, fair wear and tear excepted.

## **6.0 INSPECTION, TESTING AND REJECTION**

- 6.1 The Buyer reserves the right (without being obligated to do so) to inspect and test all the Goods during manufacture, processing or storage at any premises and Services performed to ensure that the quantity, quality and description of the Goods and Services shall be as specified in the Order and/or in any applicable Specification or as otherwise agreed in writing by the Buyer. The Seller shall provide the Buyer with all facilities reasonably required for such inspection and testing.
- 6.2 The Seller shall produce a sample for approval where the Goods or Services involve or relate to manufacture. If the Buyer is not satisfied that Goods inspected and/or the sample provided complies in all respects with the Contract, the Seller shall promptly take all steps as are necessary to ensure compliance without affecting the delivery schedules of the Goods or time for performance of the Services.
- 6.3 Notwithstanding the aforesaid, the Buyer may reject defective or non-conforming Goods and Services and shall have no obligation to pay for such Goods or Services. Non-conforming or defective Goods or Services shall not be considered to have been delivered or performed and such Goods will be held for the Seller's instruction at the Seller's cost and risk. The Seller shall, if the Buyer so requests refund the Buyer any monies paid towards the Price of such Goods. Without prejudice to and in addition to the Buyer's other rights and remedies, the Buyer shall have the right to deduct from the Price or require the Seller to pay, as liquidated damages a sum calculated at the rate of 5% of the Price of the Goods and/or Services so rejected.

- 6.4 Seller shall notify Buyer, and obtain approval where required, of any change in Goods/Services specifications, materials and processes, manufacturing locations as well as the use of nonconforming material.
- 6.5 Seller shall grant right of access by the Buyer, Buyer's customer, and regulatory authorities to all facilities involved in this Contract and to all applicable records.
- 6.6 Seller shall flow down to sub-tier suppliers the applicable requirements in this Contract, including key characteristics where required.

## **7.0 ACCEPTANCE TEST**

- 7.1 Before delivering the Goods or Articles upon completion of the Services, the Seller shall carefully inspect and test them for compliance with the Specification. The Seller shall, if required by the Buyer, give the Buyer reasonable notice of such test and the Buyer shall be entitled to be represented thereat. The test shall hereinafter be referred to as the "Acceptance Test".
- 7.2 The Seller shall also supply the Buyer a copy of Seller's test certificate in respect of the Acceptance Test duly certified by Seller ("Acceptance Test Certificate"). If the Buyer's representative was present at the Acceptance Test, the Acceptance Test Certificate shall not be valid unless certified by both the Buyer's Representative and the Seller. Endorsement of the Acceptance Test Certificate by the Buyer shall not relieve the Seller of its obligations hereunder. Such Acceptance Test Certificate shall have no legal effect other than serve as a declaration by the Seller that it is ready to proceed to the next phase of the Contract.
- 7.3 All costs, charges and expenses and labour facilities and equipment required for the Acceptance Test shall be borne by the Seller.
- 7.4 The Buyer shall not be under any obligation to accept the delivery of the Goods which have not passed the Acceptance Test under this Clause.

## **8.0 PRICES**

- 8.1 The Prices of the Goods (and Services) shall be as stated in the Order and, unless otherwise stated, shall be firm and fixed and shall include, without limitation, all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods (and Articles) to the delivery address (as shall be advised by the Buyer in writing to the Seller) and all duties, taxes and levies including all applicable sales taxes and value added taxes other than Goods and Services Tax ("GST") chargeable Under any applicable Goods and Services Tax Act/Law. The Buyer shall pay GST chargeable on the Price if the Seller is a taxable person under the Act and renders a tax invoice in compliance with the Act.
- 8.2 No increase in price may be made whether on account of increased material, labour or transport or operation costs, fluctuation in rates of exchange, new or increased taxes or surcharges or otherwise, without the prior written consent of the Buyer.
- 8.3 The Buyer reserves the right to make changes to the Specification and/or delivery schedules and the cost impact (if any) of such changes shall be agreed upon between the Buyer and the Seller.

## **9.0 INVOICE AND TERMS OF PAYMENT**

- 9.1 The Seller shall be paid the Price of the Goods and Services within 60 days after the end of the month of receipt by the Buyer of a proper invoice or after the acceptance of the applicable Goods or Services, whichever is later.
- 9.2 The Buyer shall be entitled to set off against the Price any sums due and owing to the Buyer by the Seller (including but not limited to refunds and liquidated or other damages payable by the Seller hereunder or otherwise).

## 10. WARRANTY

10.1 The Seller warrants to the Buyer that the Goods:

- i) will be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
- ii) will be free from defects in design, material and workmanship and shall meet the performance specifications specified in the Order;
- iii) will comply fully with all Specification; and
- iv) will comply with all applicable statutory requirements and regulations relating to the Goods at its intended place of use.
- v) will, including any materials or component contained therein, have no less than the minimum remaining shelf-life specified in the Order (if applicable) at the time of acceptance by the Buyer.

10.2 The Seller also represents and warrants that it possess the necessary expertise to carry out the Services and that the Services will be performed in accordance with good industrial practice by appropriately trained, qualified and competent personnel in good workman-like manner, with due care and diligence and to the highest standard of quality, safety and health as is reasonable for the Buyer to expect in all the circumstances and that the Services will also conform fully to the Specification (if any) and any descriptions furnished by the Buyer.

10.3 Seller shall provide warranty for all Goods and Services for a period of twelve (12) months from the date of acceptance of the Goods or Services by the Buyer.

10.4 Without prejudice to any other right or remedy of the Buyer (including the right to reject defective or non-conforming Goods or Services), if any Goods or Services are not supplied or performed in accordance with the Contract, or if there is a breakdown of any Goods during the warranty period, the Buyer shall be entitled to:

- i) upon written notice to the Seller, require the Seller to remedy or repair at its own costs, any defect or replace or re-perform the non-conforming Goods or Services within 4 weeks (or such other period as agreed between the parties) of the receipt of notice of defect or breakdown from the Buyer. Unless otherwise agreed between the parties, the necessary re-performance, repair or replacement shall be carried out by the Seller on-site at location of the Goods or Articles. If requested by the Seller, the Buyer shall as soon as practicable return the Articles or defective Goods or parts thereof to the Seller for re-performance of Services, repair or replacement, at the Seller's risk and expense. The Seller's warranty for any repaired or replacement Goods or re-performed Services shall be extended for a further twelve (12) months from the date of receipt by the Buyer of the repaired or replaced Goods or Articles (where there is re-performance of Services on Articles) or the date of completion of the re-performed Services. If the Seller fails to remedy or replace the defective non-conforming Goods or Services within 4 weeks or such other period as required herein, the Buyer shall have the right (a) to procure the Goods or Services from alternative sources and all costs incurred by the Buyer in the procurement shall be borne by the Seller; OR (b) repair or rework the Goods or Services on its own or by a third party at the Seller's expenses without in anyway absolving or relieving the Seller of its warranty obligations, or
- ii) ii) at the Buyer's sole option, and whether or not the Buyer had previously required the Seller to remedy or replace the Goods or Services treat the Contract as discharged by the Seller's breach and require the refund of all payment made towards the Price in addition to a claim for loss, expense and damage arising from the Seller's breach.

## 11. INDEMNITY

The Seller shall indemnify the Buyer in full against all liability, claims, loss, damages, costs and expenses (including legal expenses) awarded against, incurred, suffered or paid by the Buyer as a result of or in connection with:

- i) breach or non-compliance of provision of the Contract;
- ii) any act or omission of the Seller or its employees, personnel, agents or sub-contractors
- iii) in performance of the Contract.

## **12. GIFT, INDUCEMENT AND REWARDS**

The Buyer shall be entitled to terminate the Contract immediately if the Seller or any person employed or engaged by the Seller or any person purporting to act on the Seller's behalf has done any act or omission which contravenes any law for the suppression of corruption practices. The Seller shall be liable for any liability, costs, expenses, losses or damages incurred or suffered by the Buyer as a result of or in connection with the aforesaid actions or omissions and/or termination of the Contract.

## **13. TERMINATION**

13.1 Without prejudice to its rights accrued prior to termination, the Buyer shall be entitled forthwith to terminate the Contract if:

- i) the Seller commits any breach of any of the provisions of the Contract and, in the case of a breach capable of remedy and provided that such breach is not in the nature of repudiatory breach, fails to remedy the same within 10 days after receipt of written notice giving full particulars of the breach and requiring to be remedied;
- ii) an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Seller;
- iii) the Seller makes any voluntary arrangement with its creditors or becomes subject to any petition or proceeding in a court for compulsory winding up or is being subject to the supervision of the court either voluntary or otherwise;
- iv) the Seller goes into liquidation except for the purpose of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the Seller under the Contract;
- v) the Seller being an individual or, where the Seller is a firm, any partner in that firm shall become a bankrupt or is presumed under the relevant bankruptcy law to be unable to pay any debt;
- vi) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Seller; or
- vii) the Seller ceases, or threatens to cease, to carry on business.

13.2 Upon termination of the Contract, all Articles (except for those which have been delivered to and accepted by the Buyer after completion of the Services) shall be returned forthwith to the Buyer in the same condition as they were when Seller takes custody of the same and all payment made towards the Price for all Services and Goods not accepted by the Buyer shall forthwith be refunded to the Buyer.

## **14. WAIVER**

No delay or failure to exercise any right herein by the Buyer shall be deemed to be a waiver thereof. Any waiver by the Buyer of any breach of the Contract shall be in writing and shall not be considered as a waiver of a subsequent breach of the same or the breach of any other provision.

## **15. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

The Seller will fully and effectively indemnify, defend and save harmless the Buyer (including, for this purpose, every officer, department, employee, servant, agent and representative thereof) against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the Buyer's acceptance, use, sale, manufacture, lease, distribution, possession or other disposal of the Goods infringes or is alleged to infringe the industrial and/or intellectual property rights including, without limitation, any trade secret, confidential information, proprietary information, patent, copyright, registered design or trademark, of any third party.

## **16. DRAWING AND TECHNICAL DOCUMENTS**

Upon completion of Services or delivery of Goods or earlier termination of this Contract, the Seller shall, if required by the Buyer, return to the Buyer, or otherwise destroy all materials in its possession or control which contains confidential information, including, without limitation, documents, drawings, CAD drawings, computer media, models, prototypes, sketches, designs, and lists furnished by the Buyer, including copies thereof made by the Seller, and to delete from its computers and storage media any software, data files, or CAD files containing confidential information furnished by the Buyer. When materials have been destroyed, the Seller shall keep a record identifying and certifying completion of destruction of materials and make available such record to the Buyer if so demanded by the Buyer.

## **17. ASSIGNMENT**

17.1 The Buyer may transfer or assign any of its rights and obligations under this Contract to any company of choice by the Buyer [Sensoronix, Inc.], the Seller shall not transfer or assign any of its rights and obligations under this Contract without the prior written consent of the Buyer.

17.2 The Seller shall not subcontract any part of the Contract without written consent from the Buyer. Notwithstanding the Buyer's consent, the Seller shall not be relieved of its liabilities or obligations under the Contract by subcontracting and shall remain fully responsible for all acts and omissions of its subcontractors.

## **18. GOVERNING LAW & JURISDICTION**

Unless otherwise agreed, the Contract shall be subject to, governed by and construed in accordance with the laws of United States of America. Both the Seller and Buyer submit to the non-exclusive jurisdiction of appropriate courts.

## **19. EXCLUSION OF LIABILITY**

The Buyer shall not be liable for any special, indirect, incidental or consequential loss or damage, loss of revenue or profit, loss of business opportunity, loss of goodwill howsoever arising even if the Buyer has been advised of the possibility of such loss or damage. This exclusion will apply regardless of the form of action brought against the Buyer.

## **20. SEVERABILITY**

In the event that any provision of the Contract is held invalid, unlawful, or unenforceable by any competent authority, in whole or in part, the validity, legality, or enforceability of the remaining provisions of the Contract shall not be effected or impaired but the Contract shall be construed as if such invalid, unlawful or unenforceable provision had never been contained in the Contract.

## **21. EXPORT LICENSE**

If an export license is required for the export of the Goods or Services ordered, the Seller shall at its own cost and expense, obtain and maintain the same in timely manner to facilitate the export of the Goods or Services to the Buyer.

## **22. EXCLUSION OF THIRD PARTY'S RIGHTS**

A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act to enforce any of its terms.

## **23. VIENNA CONVENTION TO BE EXCLUDED**

The United Nations Conventions on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply to this Contract, and all provisions thereof, express, implied or otherwise, which may or will have any effect on any of the Conditions are hereby expressly excluded

## **24. RIGHTS CUMULATIVE**

All rights and remedies of the Buyer set out in the clauses herein are cumulative and may be exercised by the Buyer in addition to other rights and remedies which the Buyer may have at law or under any other provisions in the Contract.

## **25 CONFIDENTIALITY**

The Seller shall not disclose the Contract (including its existence), its terms and conditions, any information relating to the Contract or any information issued or furnished by or on behalf of the Buyer to the Seller to any other party. Seller may only use the aforesaid information for the purpose of performing the Contract or providing the necessary response to the Buyer and may disclose the same to its employee or subcontractor only on a need to know basis.

## **26 SECURITY**

The Seller shall take appropriate measures in order to protect classified materials and information, in accordance to the Buyer's national laws, regulations and practices. Seller shall ensure that all Goods produced have been delivered to the Buyer and any and all excess Goods (whether defective or otherwise) not delivered to the Buyer has been destroyed or stripped down.

## **27. ENVIRONMENT, HEALTH AND SAFETY**

The Buyer is committed to maintaining exemplary standards in the environment, health and safety and may require the Seller to participate in maintaining such standards where applicable. The Buyer's policy statements can be accessed from this website: <http://www.sensornix.com>.