



January 2016

**Article I: Terms and Conditions**

1.1 Governing Terms

These terms and conditions ("Terms and Conditions") govern the sale of all products and services ("Products") by 7 Mile Solutions Inc and 7 Mile Manufacturing LLC ("Seller") to any party or entity that purchases Products from Seller ("Buyer"). These Terms and Conditions apply despite any conflicting, contrary or additional terms or conditions in any purchase order or other document or communication from Buyer. The scope of this Article is intentionally broad. The specific provisions that follow do not limit that broad scope.

1.2 Limitation on Acceptance of Offer

These Terms and Conditions expressly limit Buyer's acceptance of any offer of sale of Products by Seller to the terms and conditions in these Terms and Conditions. This express limitation applies even if Buyer's terms of acceptance differ in some respects from these Terms and Conditions.

1.3 No Additional Terms

Neither Seller's acknowledgment of a purchase order nor Seller's failure to object to conflicting, contrary or additional terms and conditions in a purchase order will be deemed an acceptance of those terms and conditions or a waiver of any of the provisions of these Terms and Conditions.

1.4 Waiver and Modification

These Terms and Conditions can only be waived or modified in a written agreement signed by an officer of Seller. Other representatives of Seller are not authorized to vary any of these Terms and Conditions.

**Article II: Quotations and Orders**

2.1 Quotations

Only quotations in writing from Seller will be binding. All quotations will expire automatically thirty (30) days after date Seller issued them unless otherwise specified. Oral quotations will not be binding. Seller reserves the right to correct all typographical or clerical errors that may be present in any quotation or order.

2.2 Orders

Orders will be initiated by Buyer issuing a purchase order or otherwise placing an order by electronic means acceptable to Seller. Orders will identify the Products, unit quantities, part numbers, descriptions, applicable prices, billing address, shipping address, shipment method, payment method (pending approval), FOB point and requested delivery dates. All orders are subject to Seller's acceptance. Subsequent amendments or cancellations may require amendment or cancellation fees, which will be at Seller's sole discretion.

**Article III: Warranties**

3.1 Warranty of Title

Seller warrants good title to Buyer only against liens, encumbrances and claims arising by, through, and under Seller, and not otherwise.

3.2 Express Warranty

Seller warrants that Products delivered under these Terms and Conditions will be free from defects in material, workmanship and fabrication under normal use and service. This warranty expires as expressly defined for the product or service purchased as noted on the sellers website or on the 90<sup>th</sup> calendar day following the date of delivery of those Products to Buyer.

### 3.3 EXCLUSION OF ALL OTHER WARRANTIES

SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSES) OR STATUTORY, OTHER THAN THE EXPRESS WARRANTY IN SECTION 3.2 AND WARRANTY OF TITLE IN SECTION 3.1. THERE ARE NO OTHER REPRESENTATIONS OR WARRANTIES.

### 3.4 Limitation on Time for Claims of Breach of Warranty

Buyer has until the 90<sup>th</sup> day following the delivery of Products or for the warranty period expressly defined for the product or service noted on the seller's web site to submit any claim for a breach of warranty for those Products. Buyer's failure to submit a claim within that time will be an admission by Buyer and conclusive proof that those Products are in every respect as warranted and will release Seller from any and all claims for damage or loss sustained by Buyer.

### 3.5 Buyer's Exclusive Remedies for Breach of Warranty

If Buyer submits a timely claim for breach of warranty, Buyer's sole and exclusive remedy will be, at Seller's election, either (1) the repair or replacement, at Seller's election, of the defective Product(s) or (2) a refund not to exceed the purchase price of the defective Product(s). Buyer will never be entitled to, and Seller will never be liable for, indirect, special, incidental or consequential damages of any nature including, without limitation, business interruption costs, removal and/or reinstallation costs, re-procurement costs, loss of profit or revenue, loss of data, promotional or manufacturing expenses, overhead, injury to reputation or loss of customers, even if Buyer has advised Seller of the possibility of those damages.

### 3.6 Products Not Intended for Life Sustaining Purposes

Products are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of those Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any of those applications (1) Buyer acknowledges that that use or sale is at Buyer's sole risk; (2) Buyer agrees that Seller and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from that use; and (3) Buyer will indemnify, defend and hold Seller and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with that use or sale.

## **Article IV: Title to Goods and Risk of Loss**

### 4.1 Transfer of Title - Risk of Loss

Title to Products and risk of loss will pass from Seller to Buyer when Products have been packaged and shipped by seller FOB Origin unless otherwise agreed upon by seller.

### 4.2 Return of Products - Risk of Loss on Buyer

Buyer will bear the risk and expense of returning any Products.

### 4.3 Breach of Terms and Conditions - Risk of Loss Unaffected

Breach of these Terms and Conditions by either party will have no effect on the provisions of these Terms and Conditions that allocate risk of loss.

## **Article V: Seller's Obligation to Tender Delivery of Products**

### 5.1 Requested Delivery Dates(s)

When issuing a purchase order or otherwise placing an order by electronic means acceptable to Seller, Buyer will indicate an approximate date or dates on which Buyer requests the ordered Products will be delivered.

### 5.2 Seller to Use Reasonable Efforts

Seller will use reasonable efforts to initiate shipment and schedule delivery to accommodate Buyer's requested delivery dates.

### 5.3 No Liability for Failure to Deliver on Delivery Date

Buyer acknowledges that any delivery dates that Seller provides (or that Buyer requests) are estimates only and that Seller is not liable for any failure to deliver on those dates.

5.4 Shipment of Products

All shipments by Seller are F.O.B. point of origin and Buyer will be solely responsible for all transportation charges in addition to the price of the Products unless otherwise agreed to in writing from the seller. Subject to Seller's right of stoppage in transit, delivery of the Products to the carrier will constitute delivery to Buyer. Seller will select the carrier and delivery route unless Buyer otherwise specifies in writing.

5.5 Right to Deliver in Installments

Seller has the right to make deliveries in severable lots, and to invoice for each such lot separately. Buyer will pay those invoices when due, without regard to subsequent deliveries. Delay in delivery on one or more lots will not relieve Buyer of its obligation to accept remaining deliveries.

5.6 Delays in Shipping

Seller will not be responsible for delays in shipping or for non-performance directly or indirectly caused by government regulations or requirements, acts of God, unavailability of energy and or materials or supplies, work stoppages, slow downs, boycotts, and any or all other causes (whether or not similar in nature to any of these specified in this Section) beyond Seller's reasonable control.

5.7 Sale Contingent On Obtaining License

If Seller is not able to obtain any and all licenses necessary to manufacture and sell the Products to which these Terms and Conditions relate, there is no sale and the parties to these Terms and Conditions are released from any liability arising from these Terms and Conditions.

5.8 Allocation of Sales

Seller has the right to allocate sales of Products among its customers in its sole discretion. As a result, Seller may, in its sole discretion, sell Buyer less than the full amount or number of Products that Buyer ordered.

5.9 Seller's Right to Cure Improper Tender

Seller has the right to cure any improper tender within a reasonable amount of time. Seller reserves the right, upon reasonable notice to Buyer, to inspect any Products that Buyer claims to be non-conforming, ascertain the facts and preserve the evidence. There has been no waiver of, or any limitation on, Seller's right to cure improper tender within a reasonable time.

**Article VI: Buyer's Obligation to Accept Products**

6.1 Inspection

Buyer has no right to inspect the Products as a condition to payment or acceptance.

6.2 Buyer's Limited Right of Rejection

The terms of these Terms and Conditions relating to Seller's tender of delivery of Products to Buyer are not of the essence and Buyer may not reject the Products for failure of the tender to conform to the terms of delivery. Each shipment of Products will be accepted or rejected as a whole. Acceptance of a part of any shipment will constitute acceptance of the entire shipment.

6.3 Acceptance, and Time and Manner of Rejection

Buyer must exercise its limited right of rejection (as Section 6.2 defines), by notice to Seller within thirty (30) days after Seller's tender of delivery (as Section 5.2 defines) and before any part of the Products has been changed from its original condition. Buyer's failure to notify Seller of its rejection within that period will be conclusive proof of Buyer's acceptance. Any notice of rejection must state each particular defect that is the basis of rejection. Defects that are not stated in any such notice are waived and will not constitute a basis for justifying rejection or claiming breach.

6.4 Buyer's Duties on Rejection

If Buyer rightfully rejects the Products, Buyer will follow any reasonable instructions from Seller with respect to the Products.

6.5 No Right to Revoke Acceptance

If Buyer accepts Products that Seller tendered under these Terms and Conditions, that acceptance will be deemed a complete discharge of all of Seller's obligations. After any such acceptance, Buyer will have no remedy against Seller nor the right to revoke such acceptance for any reason.

6.6 Special Orders and Other Non-Cancelable Orders

Despite any provision of these Terms and Conditions to the contrary, orders for special, custom, value-added and other non-standard Products, including Products to be assembled in kit form will be non-cancelable and non-returnable. Products of manufacturers that do not appear on Seller's web site, work-in-process and Products otherwise identified by Seller as "NCNR" or "Non-Cancelable and Non-Returnable" will be non-cancelable and non-returnable.

6.7 Return of Products and Cancellation of Orders

Buyer has no right to (a) countermand orders accepted by Seller; (b) defer shipments or (c) return Products, except with Seller's consent in writing and on terms that will indemnify Seller against all loss, including the profit on any part of an order that is canceled. If Seller authorizes any return of Product, Seller shall provide Buyer with an R.M.A. (Return Material Authorization), Buyer will pre-pay shipping charges on that returned Product unless Seller notes otherwise in its R.M.A.. Seller reserves the right to reject partial cancellations. All returned products are subject to a restocking and handling fee of no less than 45% of the original purchase price or \$50 whichever is greater. Unauthorized returns and/or authorized returns not clearly showing an R.M.A. number on the shipping labels will be refused.

6.8 Delivery of Wrong Quantity

Delivery of a quantity that varies from the quantity specified by Buyer in a purchase order will not relieve Buyer of the obligation to accept delivery and pay for the Products delivered.

6.9 Damage Incurred in Transit

Seller's products are 100% inspected for quality and performance prior to shipment. Damage incurred in transit or prior to receipt is the Buyer's responsibility. All damage concealed or otherwise should be brought to the attention of the carrier at the time of delivery. Filing and collection of any claim from the carrier is the Buyer's responsibility. In cases of concealed damage, freight carriers must be notified in writing within 10 days of the delivery.

**Article VII: Buyer's Obligation to Pay For Products**

7.1 Prices

Prices will be determined by agreement of the parties either by Seller's quotation to Buyer, or as Buyer indicates in a purchase order that Seller accepts. Prices will be exclusive of taxes, impositions and other charges, including: sales, use, excise, value added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agents' and brokers' fees, consular fees and import duties. If Seller becomes liable for paying or pays any of those charges, Buyer will reimburse Seller for those charges in addition to the price of the Products.

7.2 Time of Payment

Buyer will pay all amounts net thirty (30) days from date of invoice or as Seller otherwise specifies. Buyer will pay the entire net amount of each invoice from Seller according to the terms of each such invoice without offset or deduction.

7.3 Credit Approval and Medium of Payment

Orders are subject to Seller's credit approval. Seller has the right in its sole discretion at any time, to change the terms of Buyer's credit, require payment in cash, by bank wire transfer or official bank check, or to require payment of any or all amounts due or to become due for Buyer's order before shipping any or all of the Products. Buyer will submit such financial information from time to time as Seller may reasonably request to establish or continue credit terms.

7.4 Rights to Adequate Assurances of Payment

If Seller believes in good faith that Buyer's ability to make payments may be impaired or if Buyer fails to pay any invoice when due, Seller will have the right to suspend delivery of any order or any remaining balance of any order until such payment is made, cancel any order of Products already shipped, require cash payments or satisfactory security for future deliveries and for goods previously delivered, and to terminate these Terms and Conditions.

7.5 Delays in Shipment Caused by Buyer

If Buyer causes a delay in shipping, payments will become due as of the date on which Seller is prepared to make shipment.

**Article VIII: Seller's Remedies**

#### 8.1 Collection of Checks: Waiver of Accord and Satisfaction

Checks are accepted subject to collection, and the date of collection will be deemed the date of payment. Seller has the right to apply any check it receives from Buyer against any obligation owing from Buyer to Seller, regardless of any statement appearing on or referring to such check, without discharging Buyer's liability for any additional amounts that Buyer owes Seller. Seller's acceptance of any such check will not constitute a waiver of Seller's right to pursue the collection of any remaining balance, unless Seller and Buyer otherwise agree in writing.

#### 8.2 Overdue Payments: Interest

Buyer will pay interest on any invoice not paid when due from the due date to the date of payment at the rate of one and one-half percent (1-1/2%) per month or such lower rate as is the maximum allowable by law.

#### 8.3 Other Remedies of Seller

If Buyer wrongfully rejects shipment, or fails to make payment when due, or repudiates all or any part of these Terms and Conditions, Seller has the right to pursue any legal or equitable remedies, with respect to any Products affected and with respect to these Terms and Conditions. In such an event, Seller will be entitled to reimbursement for costs of collection and reasonable attorneys' fees. Seller also has the right to withhold delivery of such Products, stop delivery of such Products in possession of a carrier or other bailee, and recover damages for non-acceptance or repudiation. The measure of damages will include but, not be limited to, the difference between the market price at the time and place for tender and the unpaid agreement price, together with any incidental damages, but less expenses saved in consequence of Buyer's breach.

#### 8.4 Wrongful Cancellation

In addition to any other remedies that apply, if Seller is or becomes obligated for amounts in connection with any order that Buyer cancels (whether or not that cancellation is wrongful), including, but not limited to, cancellation fees, restocking charges, other fees or charges to any of Seller's suppliers, shippers or others, other costs and reasonable attorney's fees, then Buyer will pay to Seller on Seller's demand the total of those amounts plus an additional charge of 15% of that total.

### **Article IX: Buyer's Remedy**

#### 9.1 Buyer's Exclusive Remedy

Buyer's recovery from Seller for any claim will not exceed Seller's purchase price for the Product(s) giving rise to such claim irrespective of the nature of the claim, whether in agreement, tort, warranty, or otherwise. That refund of Seller's purchase price is Buyer's sole and exclusive remedy against Seller for any dispute arising as a result of these Terms and Conditions or any event related to these Terms and Conditions.

### **Article X: Miscellaneous**

#### 10.1 Terms and Conditions Are Entire Understanding

This document contains the entire understanding and agreement of the parties on the sale of Products to Buyer. There is no agreement, oral or otherwise, that is not in these Terms and Conditions.

#### 10.2 Reasonableness of Time

Whenever, in the performance of these Terms and Conditions, an act by either party must be performed within a reasonable time after an event described in the Uniform Commercial Code ten (10) calendar days will constitute a reasonable time within which such action will be performed.

#### 10.3 Notice

All notices, consents, approvals, specifications, changes, acceptances, rejections, waivers, designations and all other communications in connection with this Agreement ("Notices") must be in writing, and either (a) personally delivered to the intended recipient, (b) sent by certified U.S. mail, postage prepaid, to the last known address of the intended recipient, (c) faxed to the intended recipient's last known fax number, or (d) emailed to the intended recipients last known email address. Notices will be effective on the date of personal delivery, the third day after deposit in the U.S. mail as provided above or as of the date and time of the fax or email transmission, provided that the Notice by fax or email is transmitted on a business day between 9:00 a.m. and 5:00 p.m. Central Standard Time. A fax or email Notice transmitted any other time will be effective at 9:00 a.m. the next business day.

#### 10.4 Agent on Buyer's Default

If Buyer defaults under these Terms and Conditions, Seller will have the authority to appoint an agent to take all lawful action to enforce the rights of Seller hereunder, and agent has full authority to act in matters relating to the performance of these Terms and Conditions.

10.5 Exclusion of Parol Evidence

The written Terms and Conditions are intended as the final expression of the agreement of the parties and are intended as a complete and exclusive statement of the terms of their agreement. Parol or extrinsic evidence is inadmissible to explain, vary, or contradict the express terms of these Terms and Conditions. No prior course of dealing between the parties, nor course of performance, nor usage of the trade is relevant to supplement, modify, contradict or otherwise explain these Terms and Conditions.

10.6 Acceptance of a Course of Performance Does Not Change Terms and Conditions

A party's acceptance or acquiescence in a course of performance under these Terms and Conditions does not affect the meaning of these Terms and Conditions, even if that party knows of the nature of the performance and has an opportunity to object to it.

10.7 Severability

If any provision of these Terms and Conditions is held unconscionable, illegal or otherwise unenforceable, that provision will be deemed deleted and the balance of the Terms and Conditions will remain in full force and effect.

10.8 No Assignability

Buyer has no right to transfer, assign or delegate any rights, duties, agreements or obligations under these Terms and Conditions, by operation of law, merger or otherwise, without Seller's prior written consent. Any attempted or purported assignment in violation of this Section will be void. Seller has the right to transfer, assign or delegate any rights, duties, agreements or obligations under these Terms and Conditions, by operation of law, merger, conveyance or otherwise.

10.9 Terms and Conditions Binding On Successors and Assigns

The obligations, rights, terms and conditions of these Terms and Conditions will be binding on the parties and their respective successors and permitted assigns.

10.10 Indemnification

Seller will not be liable for and Buyer will indemnify, defend and hold Seller harmless from any claims based on Seller's compliance with Buyer's designs, specifications or instructions, or modification of any Products by parties other than Seller, or use in combination with other Products.

10.11 Intellectual Property

Nothing in these Terms and Conditions will be construed to grant any rights or license to use any software, hardware or other intellectual property in any manner or for any purpose that Seller does not expressly permit. All drawings, tooling, set-up, fitting-up, design information, techniques and improvements (whether patentable or unpatentable) that Seller or its agents or employees make or conceive in the fulfillment of any order or quote, are proprietary and will be Seller's property.

10.12 Force Majeure

Seller will not be liable for failure to fulfill its obligations in these Terms and Conditions or for delays in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation or inability to obtain labor or materials through its regular sources. This list is not intended to be exhaustive. Seller's time for performance of any such obligation will be extended for the time period of such delay or Seller may, at its option, cancel any order or remaining part of an order without liability by giving notice of that cancellation to Buyer.

10.13 Choice of Law

These Terms and Conditions will be governed by and construed in accordance with the laws of the State of Illinois, excluding its rules on conflicts of laws, and the United Nations Convention on the International Sale of Goods.

10.14 Interpretation

Unless these Terms and Conditions otherwise expressly provide, these Terms and Conditions will be interpreted and construed in accordance with the rules of construction and interpretation set forth in the Illinois Uniform Commercial Code.

10.15 Venue

Any action arising out of or related to these Terms and Conditions or its interpretation will be commenced exclusively in the state or federal courts located in Cook County, Illinois. Buyer hereby consents to the jurisdiction of those courts, and expressly waives the jurisdiction of any courts located outside Cook County, Illinois.