



**MERIT SENSOR™**  
Performance Under Pressure

1600 West Merit Parkway South Jordan, Utah 84095

www.merit-sensor.com

Phone: +1 801.208.4746 Fax: +1 801.208.4798

## Terms and Conditions of Sale

**1. TERMS.** Merit Sensor Systems, Inc. ("Seller" or "Merit") agrees to sell, and Customer identified above, agrees to purchase and accept the Products described in these terms and conditions of sale ("Agreement"). This Agreement is expressly made conditional on Customer's assent to the terms and conditions of this Agreement as the only terms and conditions for this purchase and sale. Acceptance of the Products sold hereunder by Customer shall constitute assent to these conditions, and Seller hereby objects to and rejects any and all additional or different sales terms proposed by Customer, whether contained in Customer's purchase order or shipping release forms or elsewhere. All proposals, negotiations and representations of purchase and sale, if any, made prior and with reference hereto are superseded hereby.

**2. PRICES AND TAXES.** Except as otherwise specifically set forth on the face of the invoice, prices quoted are in U.S. Dollars, F.O.B. shipping point. Prices include all applicable sales, use, excise or other taxes, duties or assessments, and the amount of any such taxes, duties or assessments which Seller may be required to pay or collect may be added to each invoice or separately invoiced by Seller to, and promptly paid by, Customer. Customer represents and warrants that it has the financial ability, responsibility and willingness to pay for the Products on the terms and conditions set forth herein.

**3. PAYMENT.** Customer will pay Seller the full amount of each invoice when due, and will not take, under any circumstances, any unauthorized offsets or credits. Unless otherwise agreed in a writing signed by Seller, all payments will be due net 30 days from the date of Seller's invoice. If, in Seller's judgment, Customer's financial condition poses risk of payment, then Seller may make such shipment on a C.O.D. or cash-in-advance basis, suspend its performance or revoke its acceptance of Customer's order. If Customer delays a shipment, then Seller shall have the right to demand payment 30 days from the date Seller is prepared to make shipment. Products held for Customer because of such delay in delivery shall be held at the risk and expense of the Customer. Past due invoices shall bear interest at the rate of one and one-half percent per month, but not in excess of the maximum lawful rate, until paid in full. Customer shall be responsible for all costs and expenses incurred by Seller, including attorneys' fees and costs of collection or enforcement of this Agreement, whether incurred with or without litigation, on appeal or otherwise.

**4. DELIVERY.** Delivery will be made F.O.B. Seller's warehouse, with all shipping arrangements to be made and all shipping charges to be paid by Customer. UNLESS SPECIFIC SHIPMENT DATES ARE AGREED TO ON THE REVERSE SIDE HEREOF, ALL DELIVERY DATES ARE ONLY ESTIMATES. SELLER SHALL NOT BE LIABLE FOR ANY DELAY, TIME NOT BEING OF THE ESSENCE WITH RESPECT TO SELLER'S SHIPMENT OBLIGATION ONLY. SELLER WILL USE ITS REASONABLE EFFORTS TO FILL CUSTOMER'S ORDERS IN A TIMELY MANNER. LEAD TIME REQUIREMENTS AND DELIVERY DATES WILL VARY ACCORDING TO MANUFACTURING AND OTHER CONDITIONS. EACH SHIPMENT IS TO BE CONSIDERED A SEPARATE SALE. DELAY IN DELIVERY OF ANY SHIPMENT SHALL NOT RELIEVE CUSTOMER OF ITS OBLIGATION TO ACCEPT SUCH SHIPMENT. Seller assumes no liability in connection with shipment, nor shall any carrier be construed to be an agent of Seller. Customer shall pay a storage and handling charge for any Product left in Seller's possession after notification to Customer that the Product is available to ship.

**5. TITLE AND RISK OF LOSS.** Title to and risk of loss will pass to Customer upon delivery to the carrier at the Shipping Point. Until the purchase price for the Product has been paid in full, Customer grants Seller a security interest in the goods, as a whole and individually, together with any proceeds, including accounts receivable therefrom. In furtherance thereof, Customer authorizes Seller to file any necessary financing statements or other documents to evidence and perfect such security interest.

**6. INSPECTION.** Within a reasonable period not to exceed 30 days after receipt of Product delivery, Customer will inspect such delivery and immediately notify Seller of any shortages or overages in the quantity of goods delivered. Seller shall not be liable for any shortages or overages that are not reported within such 30-day period. Customer shall notify Seller in writing of all shortages and overages referencing the Seller's invoice or packing slip number. Within a reasonable period not to exceed 90 days after receipt of Product delivery, Customer will inspect such delivery and immediately notify Seller of any defects in the Products. All returns are subject to Seller's approval and to the terms and conditions of the Seller's Return Goods Policy. Failure to notify Seller in writing of any defects within such reasonable period will constitute conclusive proof that the Products were received without defects. In any event Seller will not be responsible for any damage caused to the Products during shipment. It is the sole responsibility of Customer to file any appropriate claims with the carrier for reimbursement. Customer may return defective Products within a reasonable period not to exceed 90 days after delivery to Customer, shipping charges to be at the expense of Seller. A Return Merchandise Authorization ("RMA") also must physically accompany any returned goods. Seller reserves the right to evaluate all returns and its decision concerning damage or defects shall be conclusive. Seller will then either credit Customer's account according to Seller's then effective policy, and in an amount no higher than the invoice price of the returned Products, or replace such defective Products delivered due to Seller's processing error at its own expense as soon as reasonably practicable.

**7. CANCELLATION OF PURCHASE ORDERS.** Purchase orders are irrevocable for Products once production of the Product order has been started. The effective date of such termination is the date on which Seller receives a written termination notice from Customer. Customer will promptly pay for all Products delivered or services performed prior to the effective date of the termination. Customer will also pay Seller (a) the actual costs incurred by Seller in proportion, under Seller's accounting practices, to the terminated portion of such order, plus any special services, developing special tooling, purchasing special supplies and the like incurred in connection with the terminated order, and (b) all costs incurred by Seller as a result of such termination, including, but not limited to, Seller's expenses, if any, incurred prior to receipt, or which cannot be reasonably avoided after receipt, of such notice of non-acceptance, repudiation or cancellation by Customer.

**8. CONFIDENTIALITY.** Customer shall hold all Confidential Information of the Seller in strict confidence and shall not disclose any such Confidential Information to any other person or entity, except as expressly authorized in this Agreement. Customer shall only use Seller's Confidential Information for properly performing Customer's obligations and exercising or enforcing its rights hereunder and not, either directly or indirectly, for Customer's own benefit or for the benefit of any other person or entity, including without limitation competing with Seller. Customer agrees to use same care and discretion to avoid disclosure, publication or dissemination of Seller's Confidential Information as it uses with its own similar information that it does not wish to disclose, publish, or disseminate, but in no event shall Customer use less than reasonable care to protect Seller's Confidential Information. Customer may disclose Confidential Information to its employees and employees of its parent and subsidiary companies who have a need to know, provided that prior to disclosure Customer has written agreement with such parties sufficient to require that party to treat the Confidential Information in accordance with this Agreement. Customer shall not directly or indirectly duplicate, reproduce, employ, transcribe, copy, or reverse-engineer any prototype, component, apparatus, or product, or otherwise disclose the Confidential Information. In addition, Customer shall not authorize any third party to conduct business using the Confidential Information in violation of this Agreement. This Section 8 shall survive the termination of this Agreement for any reason. Customer shall promptly notify Seller in writing of any breach of these confidentiality obligations. If Customer and Seller have any other written non-disclosure agreement, it shall continue in force and effect, except that this Agreement shall control in the event of any inconsistency.

**Confidential Information Definition:** "Confidential Information" includes, but is not limited to Seller's Product, product information, data, ideas, techniques, technical information, design files, know-how, equipment specifications, marketing documentation, algorithms, software programs, schematics, source documents, materials, agreements, customer information, financial information, statistical information, personnel information, product development, engineering, strategic and tactical plans, sales and marketing plans, business plans, source and object code, trade secrets, designs, technology, processes, inventions (whether patentable or not), works of authorship, formulas, product development plans, blueprints, drawings, physical models, sketches, narrative descriptions, video tapes, testing data, studies, reports, evaluations, lists, terms of compensation, actual or anticipated business, research or development, and any other information that Seller or any directors, officers, employees, agents, accountants, attorneys, representatives or advisors (collectively, "Representatives") of Seller may, from time to time during the term of this Agreement, disclose to Customer. Confidential Information may be disclosed in verbal or tangible form.

**Exceptions:** Confidential Information excludes information that Customer can show through its contemporaneous written records: (i) is, or has become publicly available without breach of this Agreement but only from the date of such availability; (ii) was rightfully in Customer's possession without obligation of confidentiality prior to its receipt from Seller; (iii) was rightfully disclosed to



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Customer by a third party without obligations of confidentiality; (iv) was independently developed by Customer without use of Confidential Information; or (v) is disclosed by Customer with Seller's prior express written consent.

**Return or Destruction of Confidential Information:** At any time upon Seller's request, Customer shall promptly return all written Confidential Information furnished by Seller or by or any of its Representatives (whether prepared by Seller or otherwise, and whether in the possession of Customer or Customer's Representatives) and shall not retain any copies, extracts, summaries or other reproduction in whole or in part of such written Confidential Information. All other written Confidential Information (including all copies, extracts, summaries, or other reproductions) shall be promptly destroyed at Seller's request. Any such destruction of confidential Information shall be certified in writing to Seller by an authorized officer of Customer; provided, however, that Customer and its Representatives shall not be required to destroy any such Confidential Information if, in the opinion of its counsel, such destruction would be unlawful or violate any order, judgment, writ or decree to which Customer or such Representatives are subject or by which either Customer or its Representatives are bound. The return and destruction of such Confidential Information, as provided hereinabove, shall not relieve Customer from its other obligations hereunder.

**Ownership:** All Confidential Information shall remain the exclusive property of Seller and/or its licensors. Nothing herein shall be deemed to grant to create in Customer, by express grant, implication, estoppel, or otherwise, any right or license to Seller's patents, copyrights, trademarks, trade secrets, Confidential Information or other intellectual property.

**9. LIMITED WARRANTY AND DISCLAIMER.** Seller makes no warranty of any kind, express or implied, with regard to Products sold by Seller hereunder except that such Products conform to Seller's specifications and will be free from defects in workmanship and material at the time of delivery to Customer. Seller's sole obligation and liability for, and Customer's exclusive remedy with respect to any Product which, in Seller's judgment, fails to meet such warranty shall be, at Seller's option, either to repair or replace such Product at the delivery point specified herein at no charge to Customer or to issue Customer a credit for any such Product in the amount of the original invoice price. Such obligation shall be conditioned upon receipt by Seller of written notice from Customer of any alleged nonconformance to specifications within 30 days after delivery to Customer and of any alleged defect in material or workmanship within 30 days after Customer discovers or through the exercise of reasonable diligence should have discovered such defect. Claims must be made promptly within such period(s) and Seller must be given a reasonable opportunity to investigate and cure such nonconformance or defect. Products that Seller consents or directs in writing to be returned shall be returned to Seller, freight prepaid, F.O.B. Seller's warehouse or other destination directed by Seller in accordance with Seller's standard return policies. The foregoing warranty shall not apply to any Products that have been repaired other than with Seller's authorization and by Seller's approved procedures, that have been subjected to misuse, abuse, improper maintenance, negligence or accident, that have been damaged by excessive physical or electrical stress, or that have had a serial number or any part thereof altered, defaced or removed. Customer agrees that any technical advice furnished by Seller with reference to the use of the Products is provided without warranty, duty or compensation of any kind, and Seller assumes no obligation or liability therefor, all such advice being given and accepted strictly "AS IS" and at Customer's sole risk. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER TO CUSTOMER, ITS END-USERS OR ANY THIRD PARTIES WITH RESPECT TO THE PRODUCTS AND HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**10. LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE PROVIDED HEREIN, SELLER'S SOLE AND EXCLUSIVE LIABILITY FOR ANY BREACH OF THIS AGREEMENT OR OTHERWISE RELATING TO THE PRODUCTS SHALL BE LIMITED TO EITHER REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT, OR AN ISSUANCE OF A CREDIT IN THE AMOUNT OF THE INVOICE, AT SELLER'S OPTION. UNDER NO CIRCUMSTANCES, REGARDLESS OF THE FORM OF THE ACTION, SHALL SELLER BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON LOST GOODWILL, LOST RESALE PROFITS, WORK STOPPAGE, PRODUCT FAILURE, IMPAIRMENT OF OTHER PRODUCTS OR OTHERWISE AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE. IN ADDITION, SELLER'S AGGREGATE LIABILITY TO CUSTOMER AND ANY THIRD PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OTHERWISE RELATING TO THE PRODUCTS SHALL NOT EXCEED THE AMOUNT THAT CUSTOMER HAS PAID TO SELLER FOR PRODUCTS DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THAT THE CLAIM(S) OR CAUSE(S) OF ACTION AROSE, REGARDLESS OF THE NUMBER OF CLAIMS OR PROCEEDINGS OR THE THEORIES OF LIABILITY. THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS CONTAINED IN THIS AGREEMENT SHALL APPLY TO THE MAXIMUM EXTENT ALLOWED BY LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**11. FORCE MAJEURE.** Seller shall not be liable for damage or loss occurring as a result of any delay or failure of performance due to any cause beyond Seller's control, including, without limitation, any act of God, act of Customer or any of its representatives or agents, embargo or other governmental act, regulation or order, fire, flood, freezing, storm, accident, explosion, strike, slow down, labor disturbance, war (whether declared or not), riot, delay in transportation, inability to obtain necessary labor, materials, fuel or manufacturing facility or any other circumstance whether similar or dissimilar to the foregoing. In the event of such delay or failure, the date of delivery shall be extended for a period equal to the time lost by reason of such delay or failure. In no event shall the obligation of Customer to pay for delivered Products be suspended. In addition, if due to any such cause Seller is unable to produce sufficient goods to meet all demands from customers and internal uses, Seller shall have the right to allocate production among its customers and plants in any manner which Seller may determine to be equitable.

**12. INDEMNIFICATION BY SELLER.** Subject to the terms, conditions and limitations set forth in this Agreement, Seller shall, at its own expense, defend or, at its option, settle, any third-party claims, suits or proceedings brought against Customer claiming that any Product supplied by Seller to Customer in accordance with this Agreement infringes on any valid United States patent issued before the date of sale, and Seller agrees to pay those damages and costs, including but not limited to reasonable attorneys' fees finally awarded against Customer, or amounts agreed to in a monetary settlement, that are specifically attributable to such claims. Seller's obligations contained in this paragraph shall be subject to the conditions that Customer (a) promptly notify Seller in writing of any such claim, suit or proceeding promptly after Customer shall have received notice or obtained knowledge thereof, (b) at Customer's expense, provide Seller full information and assistance as requested by Seller in such defense, and (c) allow Seller to control the defense and settlement of the claim(s), except that no settlement shall be entered without Customer's written consent, which shall not be unreasonably withheld. In the event of any such claim, suit or proceeding, Seller reserves the right, at its option and in lieu of any other obligations or responsibilities under this paragraph, to modify or replace the affected Product to eliminate the alleged infringement, to obtain a license to cure the alleged infringement or to give Customer a refund of the price of the affected Product less an appropriate amount for depreciation. Seller shall have no liability under this paragraph or otherwise for any alleged infringement arising out of: (i) the combination of any Product with any other product whether or not furnished to Customer by Seller; (ii) the modification of any Product unless such modification was made by Seller; (iii) use of any Product in an application or environment for which such Products were not designed or contemplated; or (iv) any claim of infringement of a patent in which Customer or any affiliate of Customer has an interest or license. SELLER SHALL NOT BE LIABLE FOR ANY COSTS OR EXPENSES INCURRED WITHOUT SELLER'S WRITTEN AUTHORIZATION, AND IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO CUSTOMER UNDER, OR AS A RESULT OF COMPLIANCE WITH, THE PROVISIONS OF THIS PARAGRAPH EXCEED THE AGGREGATE SUM PAID TO SELLER BY CUSTOMER FOR THE ALLEGEDLY INFRINGING PRODUCT. The foregoing states the entire responsibility of Seller, and the exclusive remedy of Customer, with respect to any alleged intellectual property right infringement or violation by a Product.

**13. INDEMNIFICATION BY CUSTOMER.** Subject to the terms, conditions, and limitations set forth in this Agreement, Customer shall, at its own expense, defend or, at its option, settle, any third-party claims, suits, or proceedings brought against Seller arising out of or relating to: (i) the combination of any Product with any other product whether or not furnished to Customer by Seller; (ii) the modification of any Product unless such modification was made by Seller; (iii) any product of Seller, except to the extent that such claim, suit, or proceeding relates solely to a Product incorporated into such Seller product; or (iv) the use of any Product in an application or environment for which such Products were not designed or contemplated. Customer agrees to pay those damages and costs, including but not limited to reasonable attorneys' fees, finally awarded against Seller, or amounts agreed to in a monetary settlement, that are specifically attributable to such claims. Customer's obligations contained in this paragraph shall be subject to the conditions that Seller (a) promptly notify Customer in writing of any such claim, suit or proceeding promptly after Seller shall have received notice or obtained knowledge thereof, (b) at Seller's expense, provide Customer full information and assistance as requested by Customer in such defense, and (c) allow Customer to control the defense and settlement of the claim(s), except that no settlement shall be entered without Seller's written consent, which shall not be unreasonably withheld.

**14. RESERVATION OF RIGHTS.** Nothing contained in this Agreement and no sale of Products to Customer shall create in or convey to Customer or any other person or entity, by express grant, implication, estoppel or otherwise, any right, title, interest, or license in or to any of Seller's or its suppliers' or licensors' intellectual property or other proprietary rights, including but not limited to patents, copyrights, trademarks, or trade secrets, all of which are exclusively retained by Seller and its suppliers and licensors. Merit Sensor Systems, Inc. Sales Agreement 6



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**15. TERMINATION BY SELLER.** Time is of the essence as to the Customer's performance of its obligations hereunder. Seller may, in addition to its other rights and remedies at law or in equity, immediately terminate any obligation to Customer with respect to the sale of the Products by notice to Customer if in Seller's judgment: (a) Customer fails to make any payment on the date due or to accept delivery of any shipment; (b) Customer makes a general assignment for the benefit of creditors; (c) Customer admits in writing its inability to pay its debts as they mature; (d) a trustee or receiver of all or a substantial part of Customer's assets is appointed by any court; (e) any bankruptcy or reorganization proceeding is instituted by or against Customer; (f) Customer becomes insolvent or unable to pay its debts as they mature; (g) in the event delivery is dependent on Customer's cooperation, Customer fails to cooperate in effecting delivery at the time agreed upon, or absent such agreement, at the time fixed by Seller; or (h) Seller has reasonable basis for insecurity with respect to Customer's performance of its obligations to Seller and Customer fails to provide to Seller adequate assurance of Customer's performance within 10 days of Seller's demand for such assurance. Seller may also terminate any such obligation to Customer on 10 days' notice for any failure of Customer to comply with any of its other obligations to Seller contained in this Agreement; provided that such failure shall not have been corrected during such 10-day period. Seller, at its option and in addition thereto, may also make all unpaid amounts immediately due and payable. The occurrence of any of the foregoing shall be a material breach by Customer of this Agreement. Seller shall be entitled to pursue all of its rights and remedies against Customer arising out of any such breach and/or termination, and Customer shall be responsible for all costs and expenses incurred by Seller, including attorneys' fees and costs of collection or enforcement of this Agreement, whether incurred with or without litigation, on appeal or otherwise.

**16. NOTICES.** All notices and other written communications in connection with this Order Acceptance shall be in writing and shall be sent by first class mail, with all postage prepaid, to a party at its address set forth on this Agreement, and, in the case of Seller, to the attention of its President, or to such other address as may be specified by such party by notice in accordance herewith.

**17. NON-ASSIGNMENT.** Customer may not assign any of its rights or interest under this Agreement without the prior written consent of Seller in each instance and any such attempted assignment without such consent shall be void.

**18. EXPORT RESTRICTIONS.** The Products are subject to U.S. export regulations. Customer agrees to comply with all applicable international and national laws that apply to the Products, including but not limited to U.S. Export Administration Regulations, as well as other restrictions issued by U.S. and other governments

**19. INDEPENDENT CONTRACTORS.** Seller and Customer are independent contractors, and their relationship is not one of principal and agent. No act or obligation of either party is in any way binding upon the other party.

**20. NONWAIVER OF COMPLIANCE.** In the event of any default by Customer, Seller may decline to make further shipments. If Seller elects to continue to make shipments, such action shall not constitute a waiver of any default by Customer or in any way affect Seller's legal remedies for any such default. No failure by Seller to enforce at any time any provision of this Order Acceptance shall be construed as a waiver of Seller's right thereafter to enforce each and every such provision.

**21. ENTIRE AGREEMENT.** This Agreement contains all of the terms and conditions governing the sale and purchase of the Products and may not be modified or amended except by an agreement duly executed by the parties and specifically stating that it is a modification of these terms and conditions. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any of the terms set forth herein. No representations, understandings or agreements have been made or relied upon in the making of this agreement other than those specifically set forth herein.

**22. GOVERNING LAW; SEVERABILITY.** The sale of Products by Seller to Customer shall be governed by the internal laws of the State of Utah and any action arising out of or related to such sale shall be brought and maintained exclusively in the state and federal courts situated in Sale Lake County, Utah. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such, adjudication shall not affect or modify any other provision of this Agreement, but the effect shall be confined to the provision as to which such adjudication is made.