



Terms and Conditions of Sale

1. General

- (i) In these terms and conditions of sale, “Company” shall mean Z-Band Technologies, LLC. The “Customer” shall mean that entity to which a Z- Band Technologies, LLC Quotation/s or Product/s are delivered. The “Products” shall mean all software, hardware and service items listed in this quotation.
- (ii) Customer purchase orders are accepted by the Company with the understanding that the Company is bound only by these terms and conditions of sale. Any conflicting and/or additional terms issued outside this agreement may not be binding unless specifically acknowledged, in writing, by the Company.

2. License Grant

- (i) Subject to the terms and conditions of this acknowledgement, Company grants to Customer, in consideration for Customer’s payment of the prices agreed by the parties, a non-exclusive, worldwide, revocable, non- transferable, non-sublicensable personal license to access and use the Company’s software (the “Software”), whether the Software is distributed as a standalone product by Company, or is included with Company’s other Products specified in this acknowledgement. The Software is licensed, not sold. Company and its licensors retain all right, title and interest in and to the Software, and reserve all rights in the Software not expressly granted to Customer under this acknowledgement. Copyright laws and international copyright treaties, as well as other intellectual property laws and treaties, protect the Software.
- (ii) Customer shall not otherwise use, and may not copy, distribute, perform display, modify or prepare derivative works of the Software, and Customer shall not reverse engineer, decompile, or disassemble the Software. Customer shall not rent, lease or lend the Software or use it on a network or make it available on a time-sharing basis except as authorized in writing by Company. Customer shall not disclose or use for internal software development purposes the results of any benchmarking of the Software without Company’s prior written consent, nor attempt to circumvent any security, locking mechanism or other technical means used by Company to prevent unauthorized use, reproduction or distribution of the Software, or remove or obscure any proprietary rights notices placed on the Software by Company.

3. Price

- (i) This acknowledgement relates to all Products and only to the Products.
- (ii) Unless otherwise stated, the price is exclusive of installation, transportation, insurance, taxes, customs duties and other charges related to such Products, which shall be separately stated on the invoices and paid by Customer.

- (iii) In the event of changes, delays or suspension of work due to the customer's instructions, or lack of instructions, which increase the cost, the price shall be adjusted by the Company to reflect any such increased costs, and the Company may also change the delivery date as appropriate.
- (iv) The Company reserves the right to adjust its prices at any time after the expiration date of this quotation or upon at least thirty (30) days' notice to the Customer.

4. Acceptance

- (i) The Products shall be deemed accepted by the Customer upon delivery by the Company.
- (ii) The Company shall, in all cases, endeavor to meet the specifications of the order. If the Company determines such specifications cannot be accomplished within the agreed price or delivery date, it shall inform the Customer in writing, together with an estimate of the level of performance which could be achieved within the agreed price or delivery date. Within ten (10) days of receiving such information the Customer will notify the Company, in writing, whether it will accept the substitute performance or cancel the order. In the event of cancellation, the Customer shall be entitled to a credit of all payments made with respect thereto and upon cancellation and repayment, neither party shall be liable to the other for damages or any other costs or expenses. This shall be the sole remedy of the parties for the circumstances specified in this provision.

5. Delivery and Transportation

- (i) The Customer will give the Company adequate instructions for shipment of the Products within a reasonable time prior to the delivery date advised by the Company.
- (ii) Unless otherwise agreed in writing by the Company, delivery of the Products shall be F.O.B. the Company's shipping point. Risk of loss to the Products shall pass to the customer upon delivery to the carrier by the Company at the F.O.B. point.
- (iii) The Company reserves the right to otherwise select the means of transportation and routing.
- (iv) Delivery dates are not guaranteed and the Company shall not be liable for any expense, loss or damage arising directly or indirectly from any late delivery. In no case shall late delivery be grounds for rejecting Products or terminating the contract. Maximum allowed warehouse hold time for in stock Products is 45 days ARO.
- (v) Where the order provides for delivery by installments, delays in delivery or the non-delivery of any installment shall not entitle the customer to terminate the contract or reject any other installment.

6. Cancellation of Orders

- i) Purchase orders are noncancelable. Requests to cancel purchase orders or partial purchase orders must be provided in writing by the Customer to the Company and will be subject to cancellation charges of up to full quoted price of the item being cancelled.
- ii) Orders of extended warranty, annual and multi-year maintenance and support programs are noncancelable except subject to payment of the following cancellation charges: one hundred percent (100%) of the annual period contract costs for the current active period, plus one hundred percent (100%) of any discount amount applied to current active period annual contract cost and previous annual periods which are part of a multi-year maintenance and support contract being cancelled, plus thirty percent (30%) of the annual period contract cost of any future annual period which is part of a multi-year maintenance and support contract being cancelled. Upon cancellation of any annual or multi-year maintenance and support contract customer may not be eligible to any benefits of the Company's cancelled support program.

7. Terms of Payment

- i) Unless otherwise agreed in writing, payment for the product shall be as follows: NET (30) days from date of delivery. All payments shall be in U.S. dollars unless otherwise agreed by the Company.
- ii) Title in any software and/or hardware products shall not pass to the Customer until the Company has received payment in full of the contract price, together with any interest and any sums, which are due or become due from the Customer. In no event shall title to the software pass to Customer. The Customer agrees Company maintains a security interest in the software and/or hardware products until the Company receives full payment from the Customer.
- iii) Where the Company retains title to Products, the Customer may sell or dispose of such Products provided that all sums received from the transaction are held on trust for the Company unless or until the Company receives full payment for the Products.
- iv) If payment of the contract price or any other sum is not made within the agreed terms or if the Customer shall become bankrupt, enter into liquidation or has a Receiver appointed, all sums outstanding shall become payable immediately and the Company shall have the following rights: a) to charge interest at the rate of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law, whichever is lower. b) the defaulting customer shall pay all costs, expenses, and reasonable attorneys' fees resulting from the enforcement of this agreement or any right arising out of such breach and c) upon prior written notice to Customer, (1) to suspend the manufacture and delivery of any further Products, (2) to terminate any unexecuted portion of the order with the Customer without prejudice to any other

remedy, and (3) to enter the Customer's premises, during regular business hours, to repossess the Products.

- v) If payment of the contract price or any other sum is not made within the agreed terms or if the Customer shall become bankrupt, enter into liquidation or has a Receiver appointed, all sums outstanding shall become payable immediately and the Company shall have the following rights: a) to charge interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is lower, b) to suspend the manufacture and delivery of any further Products, and c) to terminate any unexecuted portion of the order with the Customer without prejudice to any other remedy.
- vi) All payments due shall be made in full, with no deductions in respect of any counterclaims from the Customer, and the Customer shall pay the full order price regardless of any delays in delivery or performance or any corrections or adjustments that may be necessary to the Products.
- vii) The Company reserves the right to delivery by installments and, unless otherwise specified, partial deliveries shall be separately invoiced and paid for without regard to later deliveries.
- viii) Orders are accepted subject to the reasonably satisfactory credit status of the Customer, and the Company reserves the right to terminate the contract or, following written notice to the Customer, change payment terms should the Customer's credit status cease to be reasonably satisfactory to the Company, subject to the termination terms and conditions provided herein.

8. Return of Products

Under no circumstances shall Products delivered to the Customer under the order be returned unless the Customer has obtained written consent from the Company.

9. Limited Warranty

- (i) The Company warrants that the hardware products sold pursuant to the contract shall be free from defects in materials and workmanship, and shall comply with the Company's advertised specifications, under normal use and service, for a period of one (1) year from the date of delivery to the Customer. The Company warrants that the software items will perform in accordance with its advertised specifications for a period of ninety (90) days from the date of delivery of the Software to the Customer. If the Customer purchased an extended Z-Band Maintenance and Support program for any of the Products, the warranty period and support scope for such Products shall be in accordance with the terms and conditions of the purchased extended Maintenance and Support program as described in Z-Band's service level agreement for the program.

- (ii) All warranty claims by the Customer shall be made within the applicable warranty period, and shall be made only with the Company's prior written consent. The Company shall conduct failure analysis on all authorized warranty returns, and its determination as to whether the Products conform to this warranty shall be final and binding as between the parties. Products which the Company determines were improperly returned to the Company shall be returned to the Customer, freight collect, and the Company reserves the right to charge the Customer for its costs of conducting the failure analysis on such Products. For additional warranty and support information refer to Z-Band's service level agreement.
- (iii) The Company's sole obligation under this limited warranty shall be to repair or replace defective Products, or to issue a credit to the Customer for such Products, at its option. All Products determined by the Company to be defective shall become the property of the Company upon replacement, repair or the issuance of credit.
- (iv) All Products supplied but not manufactured by the Company are sold subject to the manufacturer's conditions of sale. The Company's sole liability in respect of such Products shall be to pass on to the Customer the benefits from any warranty or other contract between the Company and the Manufacturer, applicable at the time of delivery.
- (v) The Company shall have no liability for defects in the Products which arise from the Customer's neglect, misuse, faulty maintenance, repairs carried out improperly or any installations or alterations carried out without the prior written consent of the Company. The Company reserves the right to charge the Customer for repairs and/or refuse to repair or replace Products where damage has resulted from actions listed above. Additional exclusions may apply. Refer to Z-Band's product user manuals and in Z-band's extended Maintenance and Support service level agreement for more information.
- (vi) THE COMPANY MAKES NO OTHER WARRANTY TO THE CUSTOMER ARISING FROM OR IN CONNECTION WITH THIS ACKNOWLEDGEMENT OF THE PRODUCTS, EXPRESS OR IMPLIED. THE WARRANTIES OF MERCHANTABILITY, NON- INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED BY THE COMPANY.

10. Limitation of Liability

IN NO EVENT SHALL THE COMPANY BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES RELATED TO OR IN CONNECTION WITH THIS ACKNOWLEDGEMENT OR THE PRODUCTS, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FROM BREACH OF WARRANTY OR ANY OTHER CLAIM, EVEN IF THE COMPANY IS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE COMPANY'S MONETARY DAMAGES TO THE CUSTOMER EXCEED THE

AMOUNTS OF MONEY PAID BY THE CUSTOMER TO THE COMPANY FOR THE PRODUCTS AT ISSUE.

11. Intellectual Property Rights and Indemnification

- (i) Any existing or hereafter acquired intellectual property rights including, but not limited to, patents, copyrights, mask work rights, trademarks, trade secrets and other proprietary rights, and all existing or hereafter discovered or invented technology, know how, confidential information and processes related to the Products or the way they are designed or manufactured shall be and remain the sole and exclusive property of the Company. The Customer agrees, upon the Company's request and at its expense, to execute any documents and instruments which are necessary to permit the Company to protect its exclusive interests in such matters. Notwithstanding, Customer shall retain ownership of all Customer's confidential information and intellectual property user for or related to its receipt of Products and Services hereunder.
- (ii) The Company agrees to indemnify and hold the Customer harmless from any and all claims, lawsuits, damages, liabilities or expenses, including reasonable attorney's fees and costs, arising from or in connection with actual or alleged infringement of any U.S. patent, U.S. copyright, U.S. trade secret or other U.S. intellectual property right by the Products, or by compliance with the Company's specifications; provided the Customer gives the Company: prompt notice of any such claim, all necessary assistance to defend the matter, and sole control over defense of the claim, including the right to settle. Notwithstanding the foregoing, the Company's sole obligation under this provision shall be satisfied if it procures a license giving the Customer the right to use the Products, or replaces the Products so there is no infringement by the Customer; in such a case, the Company shall have no further obligation to the Customer arising from such alleged or actual infringement.
- (iii) The Customer shall indemnify and hold the Company and its affiliated companies harmless from any and all claims, lawsuits, damages, liabilities and expenses, including reasonable attorneys' fees and costs, arising from or in connection with actual or alleged infringement of any U.S. patent, U.S. copyright, U.S. trade secret or other U.S. intellectual property right as a result of compliance with the Customer's specifications, or related to the Customer's use of the Products or combination of the Products with other products.

12. Severability

If any provision in these terms is deemed invalid or unenforceable it shall not, as far as possible, affect any other provision of these terms and accordingly all such other provisions shall remain in full force and effect.

13. Waiver

Where the Company waives or modifies any condition of these terms for the Customer, it shall not affect the Company's right to enforce all other conditions, and a waiver or modification on one occasion shall not be construed as applying to any other occasion.

14. Force Majeure

Notwithstanding anything to the contrary contained herein, the Company reserves the right to modify and/or extend any declared delivery dates and/or installation dates due to acts beyond its reasonable control including, without limitation, acts of God, natural disaster, regional or global closures, pandemics, strikes, acts of war or terrorism, shortage in critical components by its suppliers, interruptions, or delays of service by freight service providers, interruptions or malfunction of computer systems affecting the Company's logistical processes, labor difficulties or civil unrest. Notwithstanding the foregoing, in the event of such an occurrence, the Company shall; make a good faith effort to perform its obligations hereunder; not be liable for failures in performance resulting from delays and/or modification or waiving of any condition of these terms for the Customer, and reserves the right to terminate its performance by notice in writing without any further liability.

15. Compliance and Export Controls

Unless otherwise agreed by the parties, the Products shall not be required to comply with any regulation or provision of any foreign law or government authority, including any regulation relating to safety. The Customer shall, at its own expense, comply with all statutory and other provisions of any government department or other authority. As between the parties, the Customer shall be responsible for all compliance with U.S. export controls with respect to shipment of the Products outside the United States.

16. Arbitration

If at any time any question, dispute or difference shall arise between the parties in relation to or in connection with the Products or these terms, either party may give the other written notice of the existence of such question, dispute or difference and the same shall be referred to the arbitration of a person to be mutually agreed on or, failing agreement, within 30 days of the receipt of such notice of some person appointed by the American Arbitration Association. Such arbitration shall be held in Carlisle, Pennsylvania. The parties shall pay their own costs of the arbitration. The arbitrator's award may be entered as a final judgment in a court of competent jurisdiction. Notwithstanding the foregoing, the Company shall have no obligation to arbitrate issues arising from Customer's non-payment or misuse of Company's confidential information or intellectual property.

17. Governing Law

Unless otherwise agreed in writing, these terms and the transaction specified in this acknowledgement shall be governed and interpreted exclusively according to the laws of the state of Pennsylvania, and, subject to the arbitration provisions above, shall only be subject to the exclusive jurisdiction of state or federal courts in Cumberland County, Pennsylvania.

18. Miscellaneous

- (i) These terms, and the terms between the parties with respect to price, product, quantity and delivery date constitute the entire agreement between the parties with respect to the business subject to the acknowledgement, and shall supersede all prior agreements, representations and warranties, express or implied, between the parties with respect to such subject matter.
- (ii) Any notices required or permitted by these terms shall be in writing, and shall be given personally or by certified mail, return receipt requested, and shall be effective as of the date of receipt.
- (iii) The Customer shall not assign any of its rights or obligations under this acknowledgement to a third party without the Company's prior written consent, and any such attempted assignment shall be void. These terms shall be binding on and inure to the benefit of each party's successors and assigns.
- (iv) The Company and the Customer are independent contractors, and neither shall have the right to bind or commit the other to any obligations.
- (v) No delay or omission by the Company to exercise any right, power or remedy under this acknowledgement shall be deemed a waiver of such right, power or remedy then, or on any future occasion.
- (vi) The headings in these terms are for the convenience of the parties and shall not be considered in any construction or interpretation of these terms or the contract.
- (vii) If any provision of this Agreement is determined to be invalid or unenforceable, the provision shall be deemed automatically adjusted to conform to the requirements for validity in a manner to best effect the parties' intent (or deleted if it cannot be so adjusted), and the validity and enforceability of the remainder of this Agreement shall not be affected.

Last Updated 05/06/2024