

MRE TECHNOLOGY SERVICES, LLC ("MRETS")

STANDARD TERMS AND CONDITIONS OF SALE

FOR TECHNOLOGY PRODUCTS AND SERVICES

1. Offer and Acceptance: MRETS offers to sell and deliver products and services (referred to herein as "products") in accordance with the terms and conditions set forth herein. Acceptance of this offer is expressly limited to such terms. MRETS hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless MRETS expressly agrees to such terms in writing.
2. Prices and Releases: MRETS's price in effect on the actual ship date for the quantity actually shipped shall apply.
3. Title and Delivery: If products are shipped from MRETS facilities, shipments inside the U.S. shall be delivered F.O.B. MRETS's offices in Houston, Texas. Shipments outside the U.S. shall be delivered FCA (Incoterms 2000) Buyer's designated carrier. Title and liability for loss or damage shall pass to Buyer upon MRETS's delivery to Buyer's designated carrier. Any subsequent loss or damage shall not relieve Buyer from its obligations. Buyer shall reimburse MRETS for insurance and transportation costs on international shipments and shall be responsible for all import duties, taxes and any other expenses incurred or licenses or clearances required. MRETS may deliver products in installments. Delivery dates are estimates. MRETS shall not be liable for any damage, losses or expenses incurred by Buyer if MRETS fails to meet the estimated delivery dates. If shipment of products is made directly from a distributor or manufacturer to Buyer, the shipping rules and conditions stated in their policies shall apply.
4. Payment Terms: If MRETS extends credit to Buyer, payment terms shall be net thirty (30) days after MRETS's invoice. MRETS may change or withdraw credit amounts or payment terms at any time for any reason. If the products are delivered in installments, Buyer shall pay for each installment in accordance with the above payment terms. If Buyer fails to make any payment when due, MRETS may suspend or cancel performance under any agreements in which MRETS has extended credit to Buyer. MRETS's suspension of performance may result in rescheduling delays. If, in MRETS's judgment, Buyer's financial condition does not justify the payment terms specified herein, then MRETS may terminate this contract unless Buyer immediately pays for all products that have been delivered and pays in advance for all products to be delivered. Termination in accordance with this clause shall not affect MRETS's right to pursue any other available remedies.
5. Taxes: Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all applicable taxes and duties. MRETS will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes unless Buyer provides MRETS with a duly executed sales tax exemption certificate. If Buyer is required by law to withhold any amount of tax from its payment to MRETS, Buyer shall promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize such withholding tax.

6. Contingencies: MRETS shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond MRETS's reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God.

7. Warranties and Related Remedies:

7.1 Products not manufactured by MRETS shall carry only the warranty offered by the original manufacturer, unless specified otherwise in the offering or agreed upon by MRETS. Services shall be good and workmanlike. MRETS's warranty shall not apply to products that have been improperly installed, installed in an improper application, damaged by accident or abuse, or if Buyer alters them or fails to maintain them in accordance with the manufacturer's specifications or good practice. All labor costs and transportation costs are the responsibility and the expense of Buyer or as stated in the warranty of the original manufacturer. Buyer agrees to follow all applicable return policies of the manufacturer or the manufacturer's representative with respect to refund or repair procedures. MRETS shall not be liable for any defects that result from Buyer's design, specifications or instructions for such components.

7.2 EXCEPT AS SET FORTH ABOVE, PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3 Buyer agrees that prior to using or distributing any systems that include MRETS products, Buyer will thoroughly test such systems and the functionality of such MRETS products as used in such systems. MRETS may provide technical, applications or design advice, quality characterization, reliability data or other services. Buyer agrees that providing these services shall not expand or otherwise alter MRETS's warranties, as set forth above, and no additional obligations or liabilities shall arise from MRETS providing such services.

7.4 No MRETS products are authorized for use in FDA Class III (or similar life-critical medical equipment) unless authorized officers of the parties have executed a special agreement specifically governing such use. Only those MRETS components which MRETS has specifically designated as military grade are designed and intended for use in military/aerospace applications or environments. Buyer acknowledges and agrees that any military or aerospace use of MRETS products which have not been so designated is solely at the Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

7.5 Notwithstanding anything to the contrary, SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING SUCH SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Intellectual Property Indemnification:

**8.1 MRETS will not pay any damages, liabilities or costs and will not defend, indemnify or hold harmless Buyer against any claim, suit or proceeding brought against Buyer, insofar as such claim, suit or proceeding is based on an allegation that products supplied by MRETS to Buyer directly infringe any patent, copyright, or trade secret.**

THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INTELLECTUAL PROPERTY INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT, AND THAT IN THE ABSENCE OF SUCH TERMS, THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9. Limitations and Damages Disclaimer:

9.1 General Limitations. IN NO EVENT SHALL MRETS BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE PRODUCTS PROVIDED HEREUNDER, REGARDLESS OF WHETHER MRETS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, RE-TESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST MRETS MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.

9.2 Specific Limitations. IN NO EVENT SHALL MRETS'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY MRETS PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO MRETS FOR THE PARTICULAR UNITS SOLD OR SERVICES RENEDERED UNDER THIS CONTRACT WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE, WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR UNITS OR SERVICES SOLD TO BUYER UNDER THIS CONTRACT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

9.3 BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9.4 ATTORNEYS' FEE WAIVER. If there is any dispute concerning these terms and conditions or the performance of either party pursuant to these terms and conditions, and either party retains counsel for the purpose of enforcing any of these terms and conditions or asserting these terms and conditions in defense of suit filed against it, each party will be solely responsible for its own costs and attorneys' fees incurred in

connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion, and regardless of whether applicable law provides for attorneys' fees as a recoverable cost or element of damage in such a claim or suit.

10. Cancellations and Rescheduling. No cancellation or rescheduling of orders by Buyer within fifteen (15) days of MRETS's estimated shipping date for the component will be accepted.

11. Non-waiver of Default: In the event of any default by Buyer, MRETS may decline to make further shipments. If MRETS elects to continue to make shipments, MRETS's action shall not constitute a waiver of any such default or affect MRETS's legal remedies for any such default.

12. Governing Law: This contract shall be governed by and interpreted in accordance with the laws of the State of Texas, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this contract to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this contract will continue in full force and effect. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, or by the Uniform Computer Information Transactions Act (UCITA). Buyer agrees that non-exclusive jurisdiction for any dispute arising out of or relating to this contract lies within courts located in the State of Texas and consents to venue in Harris County, Texas. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and MRETS may seek injunctive relief in any United States or foreign court.

13. Export Control:

13.1 Buyer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from MRETS, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by the EAR. Buyer furnishes the assurances provided herein to MRETS in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

13.2 Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code acquired from MRETS under this contract or any direct product of such technical data, software or software source code. Accordingly, Buyer shall not sell, export, re-export, transfer, divert or otherwise dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by US or applicable non-US laws. Further, Buyer shall give notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such product, technical data, software or software source code from Buyer with the intention of exportation. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to fulfill its obligations under this contract. If government approvals cannot be obtained,

MRETS may terminate, cancel or otherwise be excused from performing any obligations it may have under this contract.

13.3 Any product export classification made by MRETS shall be for MRETS's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such product or whether an export license or other documentation is required for the exportation of such product. This Section 13 shall survive termination of this contract.

14. Assignment: This contract shall not be assignable by Buyer without MRETS's prior written consent. Any unauthorized assignment shall be null and void.

15. Entire Agreement: This contract and the manufacturer's and distributor's instructions, warranties, warranty disclaimers and policies incorporated herein by reference or otherwise constitute the entire agreement between the parties relating to the sale of the products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the sale of the products made by any MRETS representative, which are not stated herein, shall be binding on MRETS. No addition to or modification of any provision of this contract shall be binding upon MRETS unless made in writing and signed by a duly authorized MRETS representative. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in this contract. These terms and conditions shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any purchase order or other writing not expressly incorporated herein, including but not limited to data sheets, application notes and purchase order acknowledgements. The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract. The distributor's terms and conditions for use, warranties and disclaimers, limitations of liability and remedies and other terms which are incorporated into this contract are attached hereto as Exhibit A.

## EXHIBIT A (Distributer is Ingram Micro)

**1. Requirements** - Buyer must obtain a valid Return Material Authorization ("RMA") number from Ingram Micro for all returns. RMAs will be issued, at Ingram Micro's sole discretion, in accordance with these terms and conditions. Buyer must provide its account number and all other information as required by Ingram Micro for all returns. RMAs are valid for twenty (20) calendar days from the date of issuance. Buyer must allow for in-transit time for Products to be returned to Ingram Micro, as Ingram Micro must physically receive Products within the twenty (20) calendar days. RMAs will be issued for authorized returns under one of the following categories: (i) defective Products, (ii) stock balancing, (iii) billing or shipping discrepancies, or (iv) damaged Product. Buyer is responsible for ensuring that the RMA number is clearly visible on the address label of the Product packaging when it is returned to Ingram Micro. Ingram Micro will refuse delivery of any boxes without a valid, clearly visible RMA number as noted above. Overgoods are unauthorized returns. Any Products received by Ingram Micro (i) without a valid RMA number, including Product shipments refused by Buyer or Buyer's customer except those damaged in transit from Ingram Micro to Buyer or from Ingram Micro to Buyer's customer, (ii) later than twenty calendar (20) days from the RMA date, or (iii) in a condition unsuitable for resale (excluding defective Products), will be considered Overgoods. Ingram Micro will return Overgoods to Buyer or Buyer's customer, and will charge Buyer a \$50 processing fee per shipment plus related freight charges. If Buyer refuses the shipment of Overgoods from Ingram Micro or returns the Overgoods to Ingram Micro a second time without Ingram Micro's prior authorization, Buyer agrees to relinquish all right and title to and waives all claims against Ingram Micro for credit related to such Products. Notwithstanding anything to the contrary, Ingram Micro reserves the right not to authorize the return of Products that are no longer in production or are being produced or published by a manufacturer or publisher that (i) is insolvent, (ii) has declared bankruptcy, or (iii) will not accept returns from Ingram Micro.

**2. Defective Product Returns** - Defective returns are only for Products purchased from Ingram Micro that are inoperable or do not function in accordance with the specifications published by the manufacturer or publisher and are covered under the manufacturer's or publisher's warranty. All defective returns are subject to more restrictive manufacturer or publisher policies. Buyer may request an RMA for the return of defective Products, excluding Special Order Products, within forty-five (45) calendar days of invoice date. Buyer's defective returns will be limited to a maximum of 15% of the value of Buyer's Product purchases within the same vendor code as the defective Product during the forty-five (45) calendar days prior to the RMA date, less any prior defective returns during that period. Upon receipt of the defective Product for which the RMA was issued, Ingram Micro may test the Products and may return to Buyer, at Buyer's expense, any Products found not to be defective. Upon verification that the returned Product is defective, Ingram Micro may, at Ingram Micro's sole discretion, either (i) ship Buyer a replacement Product, or (ii) provide Buyer a credit equal to the lesser of the Product's invoice price or current replacement value less any applicable charges or fees. Ingram Micro reserves the right to require Buyer to return defective Products directly to the manufacturer or publisher for replacement according to its defective Products return policy. Ingram Micro shall not be obligated to repair, replace, or issue credit to Buyer for Products rendered defective, in whole or in part, by causes external to the Products, including, but not limited to, catastrophe, power failure or transients, overvoltage on interface, environment extremes, improper use, maintenance or application of the Products or use of unauthorized parts.

Buyer shall bear all risks of loss when returning defective Products.

**3. Stock Balance Returns** - Stock balance returns are only for Products purchased from Ingram Micro that are unopened and unused and can be re-sold as new. All stock balance Products returned must be in the manufacturer's original packaging and in condition suitable for resale including, but not limited to, without price tags or stickers or additional shrink wrapping, clean, undamaged and complete ("Stock Balance Condition"). All stock balance returns are subject to more restrictive manufacturer or publisher policies. Buyer may request an RMA for the return of Products in Stock Balance Condition, except for Special Order Products, within ninety (90) calendar days of invoice date.

Buyer's stock balance returns will be limited to a maximum of 15% of the value of Buyer's Product purchases within the same vendor code as the Product to be returned during the ninety (90) calendar days prior to the RMA date, less any prior stock balance returns during that period. Upon receipt of the Product for which the RMA was issued, Ingram Micro will verify the condition of the Product. Any Products that are not in Stock Balance Condition will be considered Overgoods. Ingram Micro will return Overgoods to Buyer and will charge Buyer a \$50 processing fee per shipment returned to Buyer plus related freight charges. Additional fees may apply to returned Products; e.g., re-box, label removal, re-shrink, etc., that are not in Stock Balance Condition. Upon verification that the returned Product is in Stock Balance Condition, Ingram Micro will issue a credit to Buyer equal to the lesser of the Product's invoice price or current replacement value less any applicable charges or fees. If Ingram Micro elects to restore returned Product to Stock Balance Condition instead of returning it to Buyer, the credit to Buyer will be net of Ingram Micro's costs to return the Product to Stock Balance Condition. Buyer shall pay all costs and bear all risks of loss when returning Products to Ingram Micro.

**4. Damaged Product Returns** - Damaged Product returns are only for Products purchased from Ingram Micro and shipped via Ingram Micro's carrier of choice that are damaged in transit from Ingram Micro to the Buyer or from Ingram Micro to the Buyer's customer. Buyer or Buyer's customer shall refuse any Product delivered in damaged condition. If the Product is received in damaged condition, Buyer shall notify Ingram Micro and request an RMA within three (3) business days of receipt of such Product. Failure to notify Ingram Micro and request an RMA within such time shall be deemed an acceptance of the Product as of the date of shipment.

**5. BILLING AND SHIPPING DISCREPANCIES**

Billing and shipping discrepancies are for Products purchased from Ingram Micro that were invoiced or shipped incorrectly. These include lost shipments, short shipments, wrong sales, wrong shipments and pricing/invoice errors. Buyer may request an RMA for verified billing and shipping discrepancies within thirty (30) calendar days of invoice date. In addition, Buyer must notify Ingram Micro of any billing discrepancies related to Buyer's authorized returns within ninety (90) calendar days of RMA date. Such notice shall be reasonably detailed and shall specify the discrepancy. Failure to give such notice within the time specified herein shall be deemed a waiver of Buyer's rights to claim such discrepancy.

**6. SHIPMENT AND DELIVERY Rules of Ingram Micro**

**A. U.S. Shipments** - All Product shipments will be made FOB origin. For Products owned by Ingram Micro, title and risk of loss will transfer to Purchaser upon Ingram Micro tendering the Product for delivery to the carrier. Ingram Micro will ship Products using Ingram Micro's carrier of choice in accordance with Ingram Micro's shipping policies at the time of shipment. Additional fees and charges may also apply. If Purchaser requests Ingram Micro prepay and bill Purchaser for freight charges, Purchaser agrees that Ingram Micro retains the right to choose the carrier. Purchaser shall examine all Products upon receipt and shall notify Ingram Micro, as specified herein, of all discrepancies and refusal to accept delivery of purchased Product. Such notice shall be reasonably detailed and explain the discrepancy or why the purchased Product was refused. If Purchaser does not give Ingram Micro such notice as stated herein, Purchaser agrees that such Products have been accepted by Purchaser as of the date of shipment.

**B. International Shipments** - All shipments by Ingram Micro to Purchaser or Purchaser's customers at an address outside of the United States or the District of Columbia are subject to additional terms and will not be made unless Purchaser and Ingram Micro have entered into Ingram Micro's International Fulfillment Agreement (IFA). Under certain circumstances, Ingram Micro may choose to ship Product to Purchasers located at an address outside of the United States or the District of Columbia. These shipments will be made FCA, Ingram Micro's warehouse via Ingram Micro's carrier of choice. Title and risk of loss will transfer to Purchaser upon Ingram Micro tendering the Product for delivery to the carrier. Purchaser will bear all the costs related to shipment and delivery. Purchaser shall examine all Products promptly upon receipt and shall notify Ingram Micro of all discrepancies or if rejection is intended within five (5) calendar days after receipt. Such notice shall be reasonably detailed and shall specify the discrepancy or reason for rejection. Failure to give such notice within such time shall be deemed an acceptance of the Products as of the date of shipment. If the approval of any government or governing organization is required with respect to these terms and conditions or the distribution of the Products including without limitation, giving legal effect to these terms and conditions, protecting intellectual property and other rights in the Products or compliance with exchange regulations, Purchaser will, at its expense, immediately take whatever steps may be necessary to secure such approvals. If any such approval requires or results in the deletion or amendment of any provision of these terms and conditions, then Ingram Micro will have the right to immediately terminate these terms and conditions.