

# Jupiter Avionics Corporation Terms and Conditions of Sale

**1. BINDING, EXCLUSIVE AGREEMENT.** Buyer accepts and agrees to be bound by these standard terms and conditions of sale ("**Agreement**"). Seller objects to and rejects any additional or different terms or conditions in any form tendered by Buyer, including expressly rejecting any provisions that dictate that Buyer's terms control or any additional or different provisions in a Buyer's electronic business portal. Seller's failure to object to any provision or terms from Buyer will not be a waiver or amendment of any of the provisions of this Agreement.

## **2. DEFINITIONS.**

**a. Buyer** - the buying entity named on the Order Document.

**b. Buyer's Customer** - a third-party bona fide purchaser from Buyer of Products.

**c. Claim** - any and all claims, demands, causes of action, damages, injuries or liabilities, whether arising, at law or in equity, including those with respect to or arising under breach of contract, tort, negligence, delay in or failure of Delivery, non-performance, infringement, misappropriation, product or strict liability.

**d. Confidential Information** - all confidential or proprietary information or property of Seller or any of its affiliates (including samples, evaluation boards, designs, trade secrets, concepts, drawings, IP, pattern generator tapes, masks, technical information, technology, manufacturing processes, research, development, product roadmaps, costs, and pricing).

**e. Deliver or Delivery** - the placement by Seller of Products for receipt by Buyer at Seller's Plant.

**f. Force Majeure** - Collectively or individually, acts of God or of public enemy; acts of war, civil or military authority; Government actions, regulations, priorities, causes beyond Seller's reasonable control, allocations, or controls, whether or not valid, and including but not limited to exercise of sovereign or contractual power; fires, floods, weather, epidemics, strikes, lockouts, slow-downs, shortages, factory or port conditions or freight embargoes; yield problems; inability to obtain necessary labor, materials, or manufacturing facilities or services at a commercially reasonable cost; civil or other disobedience, insurrection, rebellion, acts of a terrorist or other enemy or any other act of force majeure.

**g. Government** - any governmental entity, authority, agency, official, or department at the national, state, county or local level.

**h. Intellectual Property or IP** - all intellectual property, including without limitation patents, patent applications, copyrights, mask works, designs, utility models, moral rights, licenses, confidential or proprietary information, trade secrets, trade indicia (including trademarks, trade names, logos, product names and slogans), and all legal rights to inventions, know-how, methods, processes, Software, protocols, schematics, specifications, web sites, works of authorship, and databases.

**i. Lead Time** - a period of time required before the delivery of the Product as defined by Seller.

**j. Order** - an order from Buyer for the purchase of Products that has been accepted by Seller in accordance with Section 8.

**k. Order Documents** - this Agreement, and any and all of the following, if applicable: a) Seller's (i) written price quote to Buyer, (ii) written acceptance of an order from Buyer, (iii) invoice for Products sold to Buyer, or b) a written sales agreement signed by Seller and Buyer for the purchase by and sale to Buyer of Products.

**l. Product** - a Standard Product or a Special Product, excluding any Software.

**m. Scheduled Date** - the date that Seller estimates as the Delivery date for Products at Seller's Plant with respect to a certain Order.

**n. Seller** - Jupiter Avionics Corporation.

**o. Seller's Plant** - the location specified by Seller where Products are held for Delivery.

**p. Specifications** - Seller's electrical and physical specifications for a Product in the applicable Seller's data sheet. Seller may modify the Specifications over time. Specifications do not include any advertisements or marketing or sales materials.

**q. Software** - all programs, algorithms, source, object, machine readable or executable code, and all operating, processing, or other instructions, for computers, devices or Products, provided, stored, used or delivered in any medium and all related documentation.

**r. Special Product** - a product as sold by Seller to Buyer that (i) is not a Standard Product, (ii) is a custom product or a modification of a Standard Product done at the request of or especially for Buyer, (iii) has been programmed, marked or labeled according to Buyer's specifications, or (iv) is classified as other than a commercial production unit (e.g. evaluation units, design verification units, samples, preproduction units, developmental units, or units provided pursuant to a waiver).

**s. Standard Product** - a product as sold by Seller to Buyer that (i) has not been modified especially for Buyer, (ii) is available to the general public for purchase from Seller, and (iii) has been packaged and tested before Delivery.

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**3. SPECIAL PRODUCTS.** All drawings, designs or specifications for Special Products must be mutually agreed upon in a written document signed by both parties and will be made a part of the Order Documents as a condition to any obligation of Seller. Orders for Special Products are non-cancellable. Other than for Products returned under Section 9, if Buyer cancels, reschedules or rejects any Delivery of Special Products, in whole or in part, Buyer will pay the full purchase price for the quantity of Special Products stated in the Order.

**4. PAYMENT; SECURITY.** Prices are quoted and all invoices are due and payable in full by Buyer in U.S. Dollars net zero (0) days after the date of invoice or as specified and accepted in an Order Document. Seller's pricing and cost structure are confidential and not subject to audit. Unless otherwise noted, quotes expire three months from their date of issuance. In the case of unforeseen increases in Seller's costs, Seller may require renegotiation of pricing for Products not yet Delivered by giving notice to Buyer of such price renegotiation and Seller's proposed new pricing. Interest will accrue on all past due amounts at the lesser of 1.5% per month or the maximum rate allowable by applicable law. Buyer will pay for all Products Delivered. For Products Delivered in installments, Buyer will pay separately for each installment. Seller may, without incurring any Seller liability, suspend or cease any Delivery and/or cancel any Orders if Buyer is in breach of this Agreement or an Order, or if Seller determines, in its sole judgment, that there is a risk that Buyer will not fulfill its obligations. Seller may require that Buyer make full or partial payment in advance, provide certain security or satisfy other conditions. Seller may enforce its rights under this Section without prior notice or demand and without proceeding under Section 19.

**5. TAXES.** All taxes, assessments, fees, and charges applied by any Government to the Products or their sale, delivery, shipment or use (collectively, "Taxes") will be added to the purchase price of the Products and will be paid by Buyer, except to the extent that Buyer provides Seller with an acceptable tax exemption certificate.

## **6. INTELLECTUAL PROPERTY RIGHTS.**

**a.** Subject to Sections 13 and 15, Seller will defend or settle valid Claims by third parties that the Products as delivered directly infringe any third party's Canadian, U.S. or European Community copyrights, trademarks or patents, excluding claims directed to manufacturing equipment, processes, or software services. For those Claims defended by Seller as provided herein, and subject to Sections 13 and 15, Seller will reimburse Buyer for the portion of the settlement or the judgment finally awarded by a court of competent jurisdiction which is directly attributable to Seller's infringement as described above.

**b.** Seller's duties to defend and reimburse are each conditioned upon Buyer providing Seller: (i) prompt written notification of the Claim; (ii) all information and assistance reasonably helpful in defending the Claim; and (iii) the sole and full authority to defend or settle the Claim and any related proceedings.

**c.** Seller will not be obligated to defend or be liable for any costs or damages where: (i) the infringement arises out of technology, IP, or requirements provided by Buyer or Buyer's Customers or a combination or modification of the Product with hardware, software, technology, IP, or other materials not provided by Seller; or (ii) Buyer's use of the Product is unauthorized under Section 15 or is not normal or intended according to the Specifications. If legal action is brought against Seller because of the occurrence of one of the events specified in (i), or (ii) above or because Products have been designed or marked to Buyer's specifications, Buyer shall defend Seller and reimburse Seller for all damages and costs awarded against Seller, including its reasonable attorneys' fees. For Products designed or marked to Buyer's specifications, Buyer grants Seller a limited royalty-free, worldwide license under all IP rights of Buyer to provide such Products to Buyer.

**d.** This section 6 sets out Buyer's sole remedy, and Seller's sole and exclusive liability, with respect to Seller's infringement of IP rights.

**e.** If any Software is installed or embedded in or furnished with the Products, Seller grants Buyer, to the extent that Seller has rights, a limited, non-exclusive, non-transferable (other than to a Buyer's Customer and only to the extent the Products are incorporated into and sold in Buyer's end products), non-assignable, license to use and distribute the Software as part of the Products and only in its original form, and solely to the extent necessary for the normal and intended uses of such Products. Buyer and Buyer's Customers will not copy, distribute, prepare derivative works, reverse engineer, decompile, or otherwise disassemble the Software. This license will terminate automatically upon breach of any license terms.

**f.** As between Buyer and Seller, Seller owns and retains all IP in, relating to, or arising from or with respect to each Product, whether or not such Product is a Special Product or a Product developed to specifications furnished by Buyer. Other than the Software license above, Seller does not grant, convey, or confer any ownership, interest, right, or license, express or implied, in or to any IP of Seller. Seller owns and retains all interest in, title to and possession of all tooling of any kind (including masks and pattern generator tapes) and related IP used in production of the Products.

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**7. ORDER PLACEMENT.** All orders and requested changes to orders are subject to acceptance by Seller, which acceptance will be (i) through Seller's written order acceptance sent to Buyer, (ii) by Delivery, or (iii) through electronic acceptance by Seller by mutually agreed upon methods. Notwithstanding anything to the contrary, however, no acceptance other than actual Delivery shall be valid for orders placed with less than Lead Time. Seller reserves the right in its sole discretion to reject any order given by Buyer regardless of whether Seller gave Buyer a price quote.

**8. DELIVERY.** Delivery of Products will be EX-WORKS (EXW) Seller's Plant (INCOTERMS 2010). Scheduled Dates are estimates and subject to change. Actual Delivery dates are not of the essence. Seller will have no liability to Buyer or any third party with regard to any delay in Delivery, regardless of the reason.

**9. ACCEPTANCE; REJECTION.** Conditioned upon providing prompt notice within 10 days after Delivery, Buyer may reject any Products that do not conform to the applicable Order Documents with respect to identity or marking. Any Product that is not properly rejected by Buyer in accordance with this Section is deemed irrevocably accepted. A Product may not be rejected and shall be deemed accepted: (i) if it is not in its original condition; (ii) if Seller determines it has been subjected to operating or environmental conditions in excess of limits established in the applicable specifications or has been subjected to static, failure to ground properly, accident, mishandling, damage, misuse, abuse, neglect, alteration, improper or unauthorized testing, installation or repair.

**10. CANCELLATION, RESCHEDULING.** Buyer may only cancel an Order for Standard Products, in whole or in part, by delivery of written notice to Seller at least sixty (60) days before the original Scheduled Date. For a partial cancellation of an Order that satisfies the notice requirements, the price will be adjusted based on the remaining quantities. Seller has the right to cancel an Order at any time if Buyer becomes insolvent or if voluntary or involuntary proceedings are commenced as to Buyer under any bankruptcy or insolvency law, or upon default or breach by Buyer of the Agreement or applicable law. After receipt of a Claim relating to the Products, Seller may terminate without liability to Seller any Order as to any or all Products not Delivered. Buyer may request a one-time reschedule for up to 30 days after the Scheduled Date, by a written notice received at least thirty (30) days before the original Scheduled Date.

## **11. LIMITED WARRANTIES; EXCLUSIVE REMEDIES.**

Seller warrants to Buyer that Standard Products (i) are, at the time of Delivery, free from material defects in materials and workmanship and (ii) will, for a period of two years\* following Delivery, materially conform to the Specifications.

This warranty does not apply to a Product that Seller determines: (i) is in other than its original condition or (ii) has been subjected to Unauthorized Uses under Section 15.

Seller's sole and exclusive liability and Buyer's sole and exclusive remedy will be for Seller (at Seller's option and conditioned upon Buyer's compliance with the requirements of this Section) as to the affected Products: (i) to refund the purchase price paid; (ii) to deliver to Buyer a replacement; or (iii) to repair such Product. This warranty and any remedy extend to Buyer only and Seller has no liability to any of Buyer's Customers, users or any other third party. **Except for this limited warranty, Seller makes no other warranty and disclaims all other warranties or liabilities as to any Product, Software or IP, whether express, implied, statutory, or otherwise, including all warranties of merchantability, fitness for a particular purpose, title, ownership, non-infringement, and non-misappropriation. Software is provided "as is" and without any warranty of any kind.** The warranty obligations of Seller and the remedies of Buyer set out in this Section 11 are the sole and exclusive obligations of Seller and the sole and exclusive remedies of Buyer for all Claims and other liabilities arising out of or in connection with any warranty, nonconformance, failure, defect or breach of warranty. No obligation or liability will arise out of Seller's rendering of advice or service in connection with Buyer's purchase of the Products or any repair or replacement of a Product. No warranties will apply after the two- year\* period. Seller does not offer any warranties of any kind, and expressly disclaims all implied warranties, on services provided by Seller which are ancillary to the purchase of Products by Buyer including, but not limited to, software modifications and reviews of Buyer's products or designs. Buyer is solely responsible for complete and thorough testing of Buyer's hardware and software and their interaction with the Products even if Seller has advised or assisted Buyer with such or testing. Seller is not liable for any defect in Buyer's product, including but not limited to those that would have been detected if Buyer had adequately tested its product.

\* - For wiJAC products and accessories and other portable equipment, one year.

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**12. RETURNS.** For Products returned under Sections 9 and 11, Buyer shall afford Seller a reasonable opportunity to inspect the Products and any return shall comply with Seller's Return Materials Authorization ("RMA") procedures. Remedies are conditioned upon Buyer giving prompt written notice to Seller within the applicable period, specifying the affected Product and the defect or nonconformance and returning all affected Products to Seller DDP Seller's Plant (INCOTERMS 2010), promptly after such notice. Transportation charges of such returns are the responsibility of Buyer.

**13. LIMITATIONS OF LIABILITY.** The aggregate cumulative liability of Seller, its affiliates, and their employees, directors, or agents ("Seller Parties") for all Claims ever made by Buyer against Seller (inclusive) arising out of or in connection with any and all Orders, Order Documents, Products, Software or Claims shall not exceed, and Buyer releases all such Claims against (and liability of) Seller Parties in excess of the net proceeds received by Seller for the affected Products specified on the Order, or \$1,000,000, whichever is less. The existence of one or more Claims will not enlarge or extend this limit. These limitations apply notwithstanding any failure of essential purpose of any limited or exclusive remedy. In no event will Seller Parties be liable to Buyer or any third party for any special, collateral, indirect, incidental, consequential, exemplary, punitive, or enhanced damages ("Excluded Damages"). Excluded Damages include costs of inspection, removal, and reinstallation of products or other items, rework, reprourement or recall costs (including administrative and personnel costs) of replacing or substituting items, loss of goodwill, loss of revenue or profits, and loss of use, without regard to whether Seller has been notified in advance of the possibility of any such Claim or damage. Except to the extent liability is not excludable by applicable law, these limitations apply to personal injuries (including death) caused by Seller's negligence. The allocation of risk contained in this Agreement is reflected in the price of the Products and is reasonable in all circumstances having regard to all relevant factors, including the parties' relative bargaining positions.

**14. CONFIDENTIALITY.** Absent written permission from Seller, Buyer will keep in confidence, will not disclose to any person, and will not use (other than for purposes of performance under the Order) all Confidential Information. Buyer will not be liable for the unauthorized disclosure of Confidential Information if it: (i) is or becomes generally available to the public, except as the result of unauthorized disclosure by Buyer; (ii) was known, without confidentiality restriction, to Buyer and such knowledge has been documented in writing prior to its receipt; (iii) is independently developed by Buyer without use of Seller's data; or (iv) is disclosed as required by law or a governmental or judicial order (provided that Buyer has given prompt written notice to Seller prior to disclosure and an opportunity to object). Immediately upon request by Seller, Buyer will return or destroy the Confidential Information and all copies, records, and documents incorporating or derived from such information. The terms of any applicable non-disclosure agreement are cumulative of the confidentiality provisions herein.

**15. UNAUTHORIZED USES.** Products shall not be used if they have been subjected to operating or environmental conditions in excess of limits established in the Specifications or otherwise have been subjected to static, failure to ground properly, accident, mishandling, damage, misuse, abuse, neglect, alteration, or improper or unauthorized testing, installation or repair. Any unauthorized sale, use or inclusion by Buyer or any of its direct or indirect customers is fully at Buyer's risk and voids any and all of Seller's obligations and warranties.

**16. GOVERNMENT CONTRACTS.** All Products of Seller are commercial items as defined in FAR 2.101. If Buyer sells Products to any Government, or to a Government prime contractor or subcontractor, Buyer shall be solely and exclusively liable for compliance with all Government acquisition statutes and regulations. Seller makes no representations, certifications, or warranties whatsoever about compliance with Government acquisition statutes and regulations, including, without limitation, those that may relate to pricing, quality, origin or content, and specifically rejects the flow down of all FAR clauses not required to be included in a subcontract for commercial items. All rights in technical data, intellectual property and software owned or licensed by Seller are hereby reserved and deemed restricted or limited. Under no circumstances shall Buyer or Buyer's Customers receive rights or documentation greater than that which is generally made available by Seller to its other commercial customers.

**17. LEGAL COMPLIANCE.** Buyer will comply with all applicable laws and regulations. The Products, Software or related technologies may be subject to export license or other international trade controls. Buyer represents, warrants and certifies that Buyer will comply with applicable laws and regulations relating to export or re-export.

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**18. BUYER'S DUTY TO DEFEND.** Buyer will defend Seller Parties and reimburse Seller Parties for all Claims, taxes, penalties, interest, costs, assessments and expenses (including court and attorney's fees) that arise as a result of or in connection with any inadequacy or invalidity of any tax exemption certificate submitted by Buyer or any act, omission or misrepresentation of Buyer or any of its affiliates, employees, agents, contractors, customers, users or representatives, including any breach of Sections 14, 15, 16, or 17.

**19. DISPUTES, APPLICABLE LAW AND FORUM.** All disputes relating to this Agreement or any other Claims arising out of or related to the relationship of the parties ("Disputes") shall be resolved exclusively by the following sequential methods, except that Seller may take immediate legal action to prevent immediate or irreparable harm to it or for Buyer's failure to make payments under Section 4. Upon written notice by one party to the other of a Dispute, the parties will first attempt to promptly resolve the Dispute by negotiation for a 45-day period. If not so resolved, all Disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with said Rules. Discovery will be reasonably limited according to the amount in dispute. If a party unreasonably delays in submitting to binding arbitration, then the other party may commence litigation in a court of competent jurisdiction specified in this Section 19. Litigation or arbitration shall be commenced solely in the parties' respective individual capacities, and not as a plaintiff or class member in any purported class or representative proceeding. Each of the parties waives its right to a jury trial. Each party will bear its own costs in dispute resolution including attorney fees, except to the extent that a court or arbitrator awards costs to one party. All Dispute negotiations will be confidential settlement negotiations that are inadmissible as provided by applicable rules of evidence in litigation. The English version of any documents shall control and all proceedings will be in English. The parties consent to the sole, exclusive personal jurisdiction, choice of law (without regard to conflicts of law principles) and venue for all meetings, hearings, or proceedings to be British Columbia, Canada. The United Nations Convention on Contracts for the International Sale of Goods will not apply to any Order, Order Document, or any sale of Products to Buyer.

**20. FORCE MAJEURE.** If a delay or failure of performance is due to Force Majeure, then a party's performance will be excused for the period of delay caused by the Force Majeure. If non-Delivery or impracticability of Delivery of any or all of the Products results, in whole or in part, from any Force Majeure, Seller's failure to Deliver will not be a breach, and Seller may elect to terminate the Order with respect to the affected Products without any liability.

**21. MISCELLANEOUS.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. There are no third party beneficiaries to this Agreement. Buyer may not assign this Agreement in any respect without the prior written consent of Seller. Seller may assign this Agreement, in whole or in part, or any of its rights or obligations hereunder without notice to or consent by Buyer. Seller may subcontract manufacturing or other work as to any or all Products without notice to or consent of Buyer. The failure of a party to enforce any right hereunder shall not waive that or any other right. If any provision of this Agreement or any Order Document is held to be illegal, invalid or unenforceable, then (i) such provision will be reformed to cure or remove such defect and if not reformed will be severed, (ii) the legality, validity and enforceability of the remaining provisions will not be affected or impaired, and (iii) the parties will endeavor in good faith to replace the severed provisions with valid provisions of the same or similar economic effect. The invalidity of a provision in a particular jurisdiction will not render unenforceable such provision in any other jurisdiction. No amendment or modification to the Order Documents will be effective unless specifically agreed in a writing signed by Seller. Notices to Seller should be in writing sent by tracked next-day delivery service to: Jupiter Avionics Corporation, 1959 Kirschner Road, Kelowna, BC, Canada V1Y 4N7. All rights, remedies and powers of Seller are cumulative and may be pursued or enforced in any manner or order. Section headings are included for convenience of reference only. The word "including" will be interpreted to mean "including but not limited to". Sections 2, 6, 11, 13 to 19, and 21 survive any termination of this Agreement.