



First Sensor Inc. Terms and Conditions of Sale

1. SCOPE AND DEFINITIONS

- 1.1 These Terms and Conditions ("Terms and Conditions") apply to and govern all quotations made by First Sensor Inc. ("Seller") to the buyer identified on such quotation ("Buyer") with respect to products manufactured or offered for sale by Buyer and to all purchase orders issued by a buyer ("Buyer") to Seller for such products and all written acceptances by Seller of any such purchase order. Acceptance by Seller of Buyer's purchase order is made only on the express understanding and condition that the purchase order is governed by only these Terms and Conditions as further provided in Section 2.3 and Section 10.1 hereof.
- 1.2 These Terms and Conditions shall be applicable and govern the relationship of Buyer and Seller whether or not they are enclosed with, or are referenced in, any quotation issued by Seller or in any purchase order issued by Buyer.
- 1.3 Notwithstanding any other provision herein, none of the provisions of the Terms and Conditions shall apply to the transfer, disposition or sale of prototype (sometimes described as "pre-production") product under a Statement of Work or separate written agreement between the parties that expressly excludes the application of these Terms and Conditions.

2. ORDERS, RESCHEDULING AND CANCELLATION

- 2.1 Purchases of products manufactured or offered for sale by Seller shall only be made pursuant to written purchase orders issued by Buyer to Seller, which shall specify the products to be purchased, the quantity of units ordered, the delivery time based upon Seller's standard delivery times, and the purchase price based upon the product prices and other prices quoted or otherwise offered by Seller to Buyer for such products.
- 2.2 The purchase order shall set forth the prices quoted by Seller to Buyer. Such quoted prices are valid by Buyer within thirty (30) days from the date of quotation. If Buyer fails to issue a purchase order within such 30-day period, Buyer shall obtain a new price quotation from Seller.
- 2.3 Each purchase order of Buyer is subject to written acceptance by Seller, and Seller reserves the right to accept or reject any purchase order from Buyer, in whole or in part, in its discretion. Any acceptance by Seller of a purchase order of Buyer that proposes or requires any new or additional terms that are different from, in conflict with or in addition to the terms set forth in these Terms and Conditions shall be only for the purchase order exclusive of these new, additional or different terms and such new, additional or different

terms are hereby automatically rejected by Seller, shall be of no force and effect and shall not be part of the agreement between Seller and Buyer formed pursuant to Section 10.1 hereof with respect to the products ordered by Buyer, unless accepted in writing signed by an authorized representative of Seller by specific reference to each such new, additional or different term(s) proposed by Buyer. For the avoidance of doubt, general references to the purchase order of Buyer shall not be deemed to be specific acceptance of any new, additional or different term(s) proposed by Buyer in or in connection with such purchase order. Seller agrees to sell and deliver the products only in accordance with and limited by the Terms and Conditions hereof. **And any additional or different terms proposed by buyer and included or referenced in any purchase order or other offer document of buyer are hereby objected to and rejected unless expressly and specifically assented to in writing by seller.**

- 2.4 Seller reserves the right (without prejudice to any other remedy) to cancel any uncompleted purchase order or to suspend delivery, and without limiting the provisions of Section 9, Seller shall have no liability to Buyer for any costs, losses or damages of any kind whatsoever arising as a result of such suspension or cancellation.
- 2.5 These Terms and Conditions do not obligate Buyer to order from Seller any minimum percentage or volume of its requirements for any products during any period, unless the parties enter into a written agreement for such minimums.
- 2.6 Seller will accept blanket orders for annual quantity pricing, provided they are firm orders for a stated quantity and delivery is accepted by Buyer within one year after the date of blanket order entry.
- 2.7 Any request by Buyer for order cancellation, rescheduling, return, or modification must be made in writing and such action must be approved in writing by an authorized agent of Seller at its principal office. Seller, at its option, may accept or reject any request by Buyer to return product for credit. Buyer shall not return any products for any reason without the prior authorization of Seller and issuance of a Return Material Authorization (RMA) number.
- 2.8 Seller will not accept requests for order delivery date changes unless received thirty (30) or more days prior to scheduled delivery date.
- 2.9 Requests for order cancellations received within thirty (30) days or less of the scheduled delivery date will not be accepted. In the event that Seller in its sole discretion elects to accept a request for cancellation, Buyer undertakes to indemnify and hold Seller harmless and reimburse Seller against and for all losses, including cost of all labor, materials, overhead, damages, charges and expenses incurred by Seller or any of its affiliates arising out of the order and its cancellation. Notwithstanding any provision of these Terms and Conditions, Buyer may not cancel, reschedule or return any product which is designated by Seller as "Noncancellable," "Nonreschedulable," or "Nonreturnable". or similar words.



3. PRICES, ADJUSTMENTS AND TAXES

- 3.1 All prices are in U.S. dollars and are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions, as agreed to by the parties pursuant to Section 2 and Section 10.1 hereof.
- 3.2 Prices published in catalogs, bulletins, or price lists are not offers to sell by Seller and are subject to change without notice. Seller may elect to discontinue the sale of any products even if set in any catalog, bulletin or price list and even if previously quoted to Buyer.
- 3.3 Prices are exclusive of all federal, state, municipal, local or other government excise, sales, value added, use, occupational or like taxes, tariffs, customs, duties and importing fees on the products. Prices are subject to increase by the amount of any such tax, tariff, duty or fee which Seller pays or is required to pay or collect upon sale or delivery of the products. Any certificate of exemption or similar document or proceeding acceptable to the taxing authorities to exempt the sale of products from sales or use tax liability shall be obtained by Buyer, at its expenses.

4. TERMS OF PAYMENT

- 4.1 Payment of the purchase price for the products purchased by Buyer shall be made in cash immediately upon delivery of the products pursuant to Section 5 hereof, except where satisfactory open account credit is established, in which case invoices are due and payable thirty (30) days from the date of invoice. Seller reserves the right at any time to revoke any such credit extended to Buyer for any risk deemed good and sufficient by Seller in its sole discretion or in the case where Seller deems, in its sole discretion, that Buyer's financial condition does not justify such credit. If Buyer's credit is revoked, Seller may cancel any unfilled product orders, unless Buyer, upon written notice, immediately pays for any product delivered or pays in advance for all product ordered but not delivered, at Seller's option.
- 4.2 Seller will issue invoices on delivery of products. If deliveries are made in instalments, each instalment shall be invoiced and paid when due without regard to other scheduled instalment deliveries.
- 4.3 Overdue and outstanding payments shall be subject to finance charges computed at a periodic rate (to the extent permitted by law) of 1.5% per month (18% per year). Buyer agrees to pay to Seller its legal and other costs in connection with the collection of the amounts owing under unpaid invoices.
- 4.4 Amounts owed by Buyer with respect to which there is no dispute shall be paid without set-off for any amounts which Buyer may claim are owed by Seller and regardless of any other controversies which may exist.
- 4.5 Buyer hereby grants Seller a security interest in the products as security for the performance by Buyer of all its obligations hereunder.

5. DELIVERY

- 5.1 All products will be shipped F.C.A. (Seller's facility where the products were manufactured) or as otherwise designated by Seller in a notice to Buyer. Therefore, ownership of, and risk of loss with respect to, the products shall pass to Buyer upon delivery thereof by Seller to Buyer or to a carrier for shipment to Buyer, whichever is earlier.
- 5.2 The products held or stored by Seller for Buyer shall be at the sole risk of Buyer, and Buyer shall be liable for the expense of Seller for holding or storing products at Buyer's request.
- 5.3 Seller reserves the right to make shipments when product is available and shall invoice shipments as made.
- 5.4 Buyer acknowledges that Seller requires sufficient lead times to manufacture the products ordered by Buyer. Seller will make commercially reasonable efforts to deliver orders within the times Seller has quoted to Buyer in writing. The times quoted for delivery will date from written acceptance by Seller of Buyer's order as provided for in Section 2, and delivery by Buyer of all necessary information to enable Seller to commence manufacturing, together with any import license or permits which may be necessary. Seller will confirm in writing, and may amend as appropriate or necessary, the delivery schedule. Without limiting the provisions of Section 9 hereof, in no event will Seller be liable for any costs, losses or damages, including without limitations re-procurement costs, arising out of or caused by delay in delivery or for non-delivery of products.

6. SHIPMENT

- 6.1 Unless specific instructions to the contrary are supplied by Buyer in or as part of the purchase order and accepted by Seller pursuant to Section 2.3, Seller will select the carrier and ship the products to Buyer's address indicated on Buyer's purchase order. Seller will not assume any liability in connection with the shipment nor constitute any carrier as its agent. Buyer shall be responsible for making all claims with carriers, insurers, warehouses and others for non-delivery, loss, damage or delay. All claims for damages to the product or shortages must be made within thirty (30) days of shipment.

7. INSPECTION

- 7.1 Delivery of the products ordered by Buyer will occur in accordance with Section 5 hereof, provided however that Buyer shall have the right to inspect the Products so delivered upon their arrival at Buyer's facilities for conformity with Buyer's order and Seller's product warranty for a period of ten (10) days from the date of arrival (the "Rejection Period"). All deliveries of



products shall be deemed accepted by Buyer, unless Buyer notifies Seller prior to expiration of the Rejection Period of any such non-conformity with reasonable specificity. Seller shall bear the cost of return shipments of non-conforming products delivered with title and risk of loss passing to Seller upon Buyer's delivery to a carrier, provided that Seller has elected the return of non-conforming products. Buyer may not reject any product for non-conformity if such non-conformity was caused by their transportation following delivery thereof by Seller in accordance with Section 5 hereof. Buyer's inspection or failure to inspect the products will not waive or limit in any way the product warranty under Section 8 hereof.

implied warranties of merchantability or fitness for a particular purpose, or non-infringement of third party intellectual property rights or other rights or those arising from statute or usage of trade. Except for the express warranties stated in this agreement, seller makes no additional warranty, express or implied, statutory or otherwise, as to its products or any other matter whatsoever and all warranties of merchantability, fitness for a particular purpose, and non-infringement of third party rights are hereby expressly excluded. Buyer shall not make any representations, conditions or warranties of any kind whatsoever relating to the products or to seller.

8. WARRANTY

- 8.1 Seller hereby gives the following limited product warranty to Buyer with respect to all products delivered by Seller to Buyer pursuant to Buyer's purchase of such products pursuant to Section 2: Subject to the terms and conditions of these Terms and Conditions, including without limitation the disclaimers and limitations set forth in these Terms and Conditions, Seller warrants that, for a period of twelve (12) consecutive months from delivery be Seller to Buyer in accordance with these Terms and Conditions, each product so delivered will be free from defects in material, comply with Seller's normal standard of workmanship and be fully merchantable.
- 8.2 Seller shall incur no liability under the foregoing warranty in Section 8.1 unless: (a) the allegedly defective products are returned to Seller within fifteen (15) days of the discovery of the alleged defect in accordance with Seller's then current repair procedures; and (b) Seller's tests disclose that alleged defect is due solely to defects in material or workmanship. The product returned to Seller for warranty service will be shipped to Seller at Buyer's expense and will be returned to Buyer at Seller's expense.
- 8.2 The liability of Seller under this warranty shall, in any event, be limited at Seller's option to either repair, or replacement of, the defective product at its own expense or to reimburse Buyer its price paid to Seller for the defective product. In no event shall Seller be responsible for defects due to physical damages suffered to the product as a result of improper handling, storage, transportation during or after shipment, misuse, mistreatment, neglect, installation or integration of the Product, or improper operation, or any repair, alterations, or accident, failure to comply with instructions of Seller, or for any other cause not attributable to defects of material or workmanship on the part of Seller.
- 8.3 **In no event shall the damages for which seller is liable to buyer for breach of any of the foregoing warranties exceed the amount paid by buyer for the defective product.**
- 8.4 **These express warranties set out in this section 8 are in lieu of all other warranties, representations or conditions, expressed or implied, including the**

9. LIMITATION OF LIABILITY; INDEMNIFICATION

- 9.1 In no event whatsoever, regardless of the nature or number of claims, shall the total collective liability of seller and its affiliates and their respective employees, directors, officers, shareholders and agents (collectively, the "representatives") to buyer for any claim exceed the amount paid by buyer for the specific item or product that is the subject matter of, or that is directly related to, buyer's claim; provided that in no event shall the total collective cumulative liability of seller and its affiliates and their respective, representatives for all claims arising under or related to (i) any purchase by buyer or (ii) the agreement by the parties or (iii) any transaction contemplated by their agreement exceed the amount paid by buyer for the products pursuant to such purchase or under such agreement or in such transaction.
- 9.2 Neither seller nor its affiliates nor their respective representatives shall have any liability under any legal theory (including, but not limited to, contract, negligence or warranty of any kind) with respect to obligations under the agreement of the parties, including without limitation these terms and conditions, or otherwise, for any lost or anticipated profits or lost or anticipated revenue, loss of future business or business opportunities, loss of investments, or loss of goodwill, loss of contracts, or other monetary loss, loss of operations or research or development time or loss of research or development efforts, or loss of future projects, or loss of cost savings, or (re-)integration or (re-) installation expenses, or failure to realize expected savings, or other commercial, or economic loss of any kind whatsoever, or for any consequential, exemplary, special, incidental, punitive or statutory damages, arising out of any claim by buyer or any other person, whether or not such damages are foreseeable and whether or not seller or its representatives have been advised of the possibility of such damages.
- 9.3 The Buyer and the Seller understand and agree that the remedies and limitations in this Section 9 and in Section 8 allocate the risks of product nonconformity between the parties as authorized by applicable laws. The amounts reflect, and are set in reliance upon, this allocation of risk and the limitation of damages set forth herein. Buyer and Seller acknowledge that each of them relied upon the inclusion of this limitation in



consideration of entering into the agreement.

- 9.4 Buyer shall indemnify and hold Seller harmless against any expense or loss resulting from any claims for actual or alleged infringement of patents, copyright, trademarks, trade secrets or other industrial or intellectual property rights arising from compliance by Seller with Buyer's designs, specifications or instructions.
- 9.5 The sale of product by Seller does not convey any license by implication, estoppels, or otherwise, under patent, copyright, trade secret, trade mark or other intellectual property right covering combinations of said product with other devices or elements unless otherwise provided for by a separate agreement between the parties.

10. GENERAL PROVISIONS

- 10.1 These Terms and Conditions, together with Buyer's Purchase Order accepted by Seller pursuant to Section 2.3 hereof and Seller's acceptance constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede and merge all prior and contemporaneous agreements, arrangements, undertakings, commitments, obligations, communications, oral or written, relating to the subject matter thereof. Pursuant to Section 2.3 hereof, any terms conflicting with these Terms and Conditions or supplementing or adding to these Terms and Conditions, which additional or conflicting term contained in any purchase order of Buyer or in any other purchase order, acceptance, acknowledgment, shipping instruction, quote, invoice or other form or document shall be void and of no force and effect and shall not modify the terms of the agreement of the parties even if accepted or not specifically objected by the receiving party. No addition to or modification of any provision of the agreement of the parties shall be binding upon the parties unless made by a written instrument subsequent to the effective date of the agreement and signed by duly authorized representatives on behalf of each of the parties.
- 10.2 Buyer shall not assign or otherwise transfer any right or obligation of Buyer under the agreement between the parties, including without limitation these Terms and Conditions, without the prior written consent of Seller, which consent may be unreasonably withheld, except (i) to an affiliate of Buyer, or (ii) to a person or entity that acquires substantially all of the assets or issued and outstanding shares of capital stock of, or ownership interests in, the Buyer. Seller shall be free to assign and transfer its rights, including without limitation claims to receive payments, and delegate its obligations under the agreement of the parties, including without limitation these Terms and Conditions, without the consent of the Buyer. Any purported assignment, novation or transfer in violation of the terms of this Section shall be void.
- 10.3 The agreement of the parties, including without limitation these Terms and Conditions, and the transactions between the parties contemplated by such agreement shall be made under, governed by and construed in accordance with the laws of Massachusetts

without giving effect to principles of conflicts of law rules that may direct the application of the law of another jurisdiction and excluding application of the United Nations Convention on Contracts for the International Sale of Goods. The parties expressly exclude the effect of all of the provisions of the U.N. Convention on Contracts for the International Sale of Goods.

- 10.4 Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts (the "Massachusetts Courts") for any litigation arising out of or relating to the agreement of the parties, including without limitation these Terms and Conditions, or the transactions contemplated by such agreement (and agrees not to commence counterclaims except in such courts), waives any objection to the laying of venue of any such litigation in the Massachusetts Courts and agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in any inconvenient forum.
- 10.5 Except as otherwise provided in these Terms and Conditions, all notices and other communications required under these Terms and Conditions or otherwise in the agreement of the parties shall be in writing and shall be deemed effective when received, or, if delivery is not accomplished by reason of some fault of the addressee, when tendered, and shall be transmitted by: (i) registered or certified mail, return receipt requested, (ii) express mail or courier or delivery service, or (iii) personal delivery, by a party to other party at the other party's main business address or to such other addresses as a party may from time to time notify the other party of in accordance with this Section.
- 10.6 Unless involving the payment of amounts due under the agreement of the parties, including without limitation these Terms and Conditions, beyond thirty (30) days from the date for which the payment is due hereunder, no default, delay or failure to perform on the part of either party shall be considered a breach of the agreement of the parties if such default, delay, or failure to perform is shown to be due entirely or proximately to any event constituting force majeure, or to causes beyond the reasonable control of the defaulting party, including without limitation strikes, lockouts or other labor disputes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, interruption of power or communications sources or connections, failures in or affecting the performance, use, or availability of the Internet or associated intranets, computer viruses, the terrorist, illegal, malicious, wanton, or capricious acts a third party, changes or modifications in international, national, or industry standards or protocols, and the existence of or changes in laws prohibiting or imposing criminal penalties or civil liability for performance hereunder.



- 10.7 Any deviation by either party from the agreement of the parties, including without limitation these Terms and Conditions, necessary to comply with applicable laws, rules and regulations shall not be considered a breach thereof. No failure or delay of either party to exercise any power or right given that party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom, practice or prior course of dealing of the parties at variance with the terms hereof, shall constitute a waiver of that party's right to demand exact compliance with the terms thereof. No waiver by either party of any right, power or privilege thereunder or any breach of any provision of the agreement of the parties, including without limitation these Terms and Conditions, by the other party shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof. Any term, obligation or provision of the agreement of the parties, including without limitation these Terms and Conditions, may be waived at any time by the party entitled to the benefit thereof by a written instrument executed by such party.
- 10.8 Buyer shall, and shall cause its affiliates to, comply with the U.S. Foreign Corrupt Practices Act, the U.S. Export Administration Act and all applicable export laws, restrictions and regulations of the United States, including without limitation the U.S. Department of Commerce and the U.S. Department of Treasury. Buyer will not, and will cause its affiliates not to, export or re-export or authorize or allow the export or re-export of any products purchased from Seller in violation of any such law, restriction or regulation, including without limitation exporting, re-exporting or diverting any such products to other country then subject to U.S. trade embargoes. Buyer shall not engage in any transaction with respect to any products purchased from Seller that gives reason to suspect that any such products will be exported, re-exported or diverted in violation of any such laws, restrictions or regulations (including without limitation based upon such factors as suspect customers, abnormal transaction circumstances or other Bureau of Export Administration "red flag" indicators), and Buyer will take appropriate steps to terminate any such transaction and give prompt notice to Seller.
- 10.9 Each party recognizes and acknowledges that a material breach of the agreement of the parties, including without limitation these Terms and Conditions, by the other party may cause the non-breaching party irreparable damage for which remedies other than injunctive relief may be inadequate. Accordingly, each party agrees that in any request by the other party to a court of competent jurisdiction for injunctive or other equitable relief, including preliminary or temporary injunctive relief, seeking to restrain such use or disclosure, such party will not oppose such remedy on grounds that the other party would not suffer irreparable harm in the absence of such injunctive or other equitable relief. Both parties understand and agree that money damages may not be a sufficient remedy for any breach of the agreement of the parties, including without limitation these Terms and Conditions, and that a party may be entitled to specific performance as a remedy for such breach. Such remedy shall not be deemed to be an exclusive remedy, but shall be in addition to all other remedies available to that party.
- 10.10 If any provision of the agreement of the parties, including without limitation these Terms and Conditions, or the application thereof to any party or circumstance, shall be declared void, illegal or unenforceable by a competent court of law, the remainder of such agreement shall be valid and enforceable to the extent permitted by applicable law. Such declaration shall not invalidate any other provision thereof, and such agreement between the parties shall thereafter continue in full force and effect. The invalid provision shall be replaced by an appropriate provision, which to the extent permitted by applicable law, comes closest to the parties' intent of what the parties would have agreed on, had they been aware of the invalidity or unenforceability, in order to meet the spirit and purpose of their transaction.
- 10.11 Incoterms used in the agreement of the parties, including without limitation these Terms and Conditions, are based on INCOTERMS 2000 as published by the International Chamber of Commerce, Paris, France.
- 10.12 References in the agreement of the parties, including without limitation these Terms and Conditions, to one or more business days shall mean any day that is not a Saturday, Sunday, United States federal holiday or holiday in the Commonwealth of Massachusetts.
- 10.13 Upon the first purchase of products by Buyer from Seller, Seller may identify Buyer as a customer of Seller on Buyer's website and in its respective marketing materials, including by using and displaying the names and logos of Buyer for that purpose.
- 10.14 **Each party hereby irrevocably waives any and all rights either of them may have, now or in the future, to have any controversy or claim between or among them or their respective affiliates, arising out of or relating to the agreement of the parties, including without limitation these terms and conditions, or any transaction contemplated by any of the foregoing or related thereto, including without limitation any claim based on or arising from an alleged tort or statutory violation, be heard or decided by a jury in a trial or other proceeding.**