

Terms & Conditions of Sale
Implen, Inc.
Version May 2015

I. General

1. These Terms and Conditions of Sale apply to all our (Implen) purchase and sale contracts - also to future business relationships of the same kind. They form a legal contract between us and the purchaser of any device or other good or service from Implen (you or contract partner).
2. Our offers are without any obligation. A contract shall not come into existence until it has been confirmed by us or delivery has been made, whichever occurs first. There may be minimal deviations from the specifications we give regarding size, weight, condition and quality.
3. We expressly reject our contract partners' general conditions and terms (whether preprinted in a purchase order, linked, referenced in any purchase or sale materials we exchange, posted online or otherwise) to the extent said conditions or terms conflict with or deviate from or expand or create any new obligations or liabilities on Implen that go beyond what is stated in these Terms and Conditions of Sale. They shall be binding upon us only if we have expressly agreed thereto in writing by means of an amendment to these terms that expressly identifies the sections of your terms and these terms that are being agreed to. Our rejection of such other terms or conditions shall also apply if we perform despite being aware of conflicting or deviating general conditions or terms of the purchaser but without declaring any reservation.
4. These Terms and Conditions of Sale incorporate the End User License Agreement (EULA) that is attached hereto, which is a binding agreement required for use of the product. These are additional terms that apply to the software that is provided with the products and any software subsequently distributed by us or which is downloaded from our websites and our mobile apps (the "Software"). In the event of a conflict between the terms of the EULA and these Terms and Conditions of sale, the EULA prevails to the extent of the conflict. The EULA can also be found posted on our website at www.implen.com/eula. Please review it carefully.

II. Prices

1. All prices are in US\$ and apply ex works. The prices applicable on the order date shall apply plus the statutory value added tax / sales tax or other similar tax of California. We reserve the right to change pricing at any time before an order is accepted by us.
2. If any significant cost increases are incurred after the contract has been concluded and which we could not foresee, in particular due to any collective bargaining agreements, exchange rate fluctuations or fluctuations in the cost of materials, we reserve the right to pass on any such increases to our contract partners provided there are more than 4 weeks between the date upon which the contract was concluded and the date of delivery or consignment of the goods. The contract is deemed concluded at the earliest of when we accept your order or deliver the products, at which time these terms and conditions become binding.
3. Pricing, discounts and negotiated commercial terms of purchase are confidential information of Implen and cannot be shared with third parties.

III. Payment Conditions

1. Our invoices are payable net and without deduction by no later than 14 days after the invoice date. Cheques and accepted bills of exchange are accepted only on account of performance, the latter only if explicitly agreed in advance. Any costs of bills of exchange and discount charges in accordance with the rates of the private banks shall be to the debit of the purchaser. Payments shall not be deemed to have been discharged until the date upon which we are able to dispose of the invoice sum without any loss.
2. The contract partner can claim a right of retention or right of setoff only with claims which are expressly acknowledged by us to be undisputed or have become final and absolute due to court adjudication.
3. In the event of any delay in payment, interest on arrears at a rate of 10 % above the base interest rate shall be payable without prejudice to the right to assert any further damages.

IV. Reservation of Title

1. All goods delivered by us remain our property until our contract partner has settled all outstanding amounts under its business relationship with us (extended reservation of title). Any kind of disposal

- by our contract partner of goods which are subject to a reservation of title is only permitted in the course of its ordinary business.
2. Our contract partner is entitled to sell the goods subject to a reservation of title provided our contract partner has fulfilled its obligations under this agreement and, provided in particular that our contract partner is not late with its performance. No attachment or assignment by way of security is permitted. The purchaser is under an obligation to make any resale of the goods which are subject to a reservation of title (resale) in turn subject to a further reservation of title. In case of resale, the purchase price paid shall take the place of the goods subject to a reservation of title. Our contract partner already now assigns to us all of its claims which arise out of any resale. Our contract partner has authority to call in the claims under the resale which have been assigned to us, at any time until we revoke such authority. If our outstanding claims are due, the contract partner is under an obligation to promptly pay over to us any sums collected. Under no circumstances is the contract partner entitled to assign any claim to third parties.
 3. Our contract partner is under an obligation to notify us of any third-party access to the goods subject to a reservation of title promptly after becoming aware thereof and is under an obligation to provide us with the necessary information and documents for an intervention. Our contract partner shall be liable for the costs incurred in order to suspend the access, in particular but without limitation through the institution of third-party proceedings, to the extent such costs cannot be collected from the third party who is executing against the contract partner's assets.
 4. In the event that our contract partner acts in breach of contract, in particular but without limitation if our contract partner is late with payment, you agree we have the right to take back the goods delivered. This shall be considered the equivalent of rescinding the agreement only if we have expressly given a written declaration to this effect. The contract partner must pay the costs of taking back the goods. We are entitled to realize any goods which we have taken back and which are subject to a reservation of title and to offset the proceeds - less reasonable costs of realization - against our outstanding claims.
 5. All industrial and intellectual property rights in and to our products remain the sole and exclusive property of Implen and its third party licensors, as applicable, and purchase of a product does not grant any rights to use or commercialize such rights for any purpose. Only the right to use it solely as part of using the products is granted.
 6. Notwithstanding any other terms herein, the Software is only licensed, not sold and title to it remains at all times in Implen and its licensors and no ownership is transferred to our contract partner. Contract partner or anyone else cannot impose any lien or encumbrance on the Software or claim any title on it.

V. Delivery Terms / Impediments to the Contract

1. Delivery times are only approximate unless they have been acknowledged by us in writing as being binding. Only the units listed in our price list, as applicable from time to time, can be delivered.
2. We are entitled to make partial deliveries. Each part delivery can be invoiced separately. In the case of any call order the call must be made at least two weeks prior to the requested delivery date.
3. Any interruptions in performance or delays due to force majeure or similar circumstances which make performance impossible either in the long-term or temporarily or which unreasonably impede performance and for which we are not responsible (lawful strike or strike in third-party operations, lock-out, official orders) entitle us to postpone delivery or performance by the duration of the impediment plus a reasonable start-up period. In such event, our contract partner cannot claim any damages.
4. In the event that we suffer any material detriment as a consequence of the interruption in performance or delay, in particular any difficulties with deadlines, we shall be entitled to rescind the agreement in respect of the non-fulfilled part, either in whole or in part. In the event that the obstacle lasts for more than 6 weeks, the contract partner shall be entitled to rescind the agreement in respect of the non-fulfilled part after the contract partner has granted a reasonable additional period of time.
5. Our performance is subject to us receiving correct and timely supplies. We are entitled to rescind the agreement if our suppliers do not supply us in good time and we are unable to obtain the goods to be delivered elsewhere at a reasonable cost.
6. Dispatch
 - a. If it is necessary to dispatch the products such dispatch shall be ex our headquarters and for the account of our contract partner. Unless otherwise agreed, we are free to choose the transportation company and the means of transport. The risk shall pass to the contract partner with effect from dispatch. This shall also apply if a delivery is agreed to be carriage-free.
 - b. If the dispatch or delivery is delayed due to circumstances for which our contract partner is responsible the risk shall pass upon notification that the goods are ready for dispatch or

delivery. The costs thereby incurred (in particular storage costs) shall be borne by our contract partner.

- c. We are under no obligation to insure the consignment or have it insured against transport damage unless we have assumed such an obligation in writing.
7. We do not assume any risk of procurement and give no guarantees whatsoever unless expressly agreed in writing with the contract partner.
8. We are entitled to refuse performance if it becomes apparent after a contract has been concluded that our rights to payment are jeopardized due to any lack of ability to pay on the part of our contract partner. The right to refuse performance shall lapse when our claims have been settled or security for them has been furnished. If we request our contract partner to, at its option, settle our claims or to furnish security within one week, we can rescind the agreement if the deadline lapses with no avail.
9. In the event that the goods have already been delivered we can rescind the agreement subject to the conditions under sub-clause 8 and demand that the goods be returned. In this event our contract partner's right to resell the goods shall lapse.

VI. Liability for Defects

1. We shall not be liable for our goods being useable or suitable for the purpose desired by our contract partner. Any advice we give regarding the application of the goods is given to the best of our knowledge but is in any event without obligation and does not exempt our contract partner from the obligation to inspect our goods for their suitability and usability for the contract partner's purposes.
2. We will repair or replace products that have defects in manufacture or workmanship for the period of one year beginning with the delivery.
3. Some of our products have a limited shelf-life. The minimum shelf-life and information on proper storage are stated on the packaging or documentation enclosed with the products or on our website. The minimum shelf-life depends on compliance with our storage instructions. Please note that we shall not be liable for defects which are due to the expiry of the specified shelf-life.
4. Notifications of non-latent defects of goods delivered or deviations or incorrect deliveries shall be made in writing within one week after receipt of the goods at the latest. Latent defects shall be notified in writing without undue delay after their discovery (and in any event within five business days). We are not liable for defects which are not notified according to these limits.
5. We shall cease to be liable for defects if the goods are improperly handled, stored or processed (mixed or combined) or not used in accordance with any materials or instructions we provide unless the defect is not due to such handling, storage or processing or misuse. Defects caused by abuse, neglect, environmental conditions (such as water, electrical surge) and other external factors not existing in the product as of the date of delivery are the sole responsibility of the contract partner and we are not obligated to repair or replace as a result.
6. We are furthermore entitled, at our option, to remove the defect or to deliver a replacement (subsequent performance). If we opt to remove a defect we are entitled, exercising equitable discretion, to choose that the damaged part be returned to us for subsequent remedy of the defect or to carry out the repair/subsequent remedy of the defect on the premises.
7. In the event that the subsequent efforts to repair or replace a product that we have an obligation for in accordance with this Article do not correct the identified defect after a reasonable number of corrective efforts by us, contract partner shall have the right to rescind the agreement with respect to the defective and irreparable product or to negotiate a price reduction with us, provided the contract partner is not responsible for the failure due to any conduct in breach of duty or any of the excluded conditions described above.
8. **THE REPAIR AND REPLACEMENT REMEDY PROVIDED ABOVE IS THE CONTRACT PARTNER'S SOLE AND EXCLUSIVE REMEDY FOR THE DEFECTS DESCRIBED ABOVE. IMPLEN AND ITS SUCCESSORS AND ASSIGNS DO NOT PROVIDE ANY WARRANTY, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO ITS PRODUCTS OR THE RESULTS TO BE OBTAINED FROM USING THEM, AND DISCLAIMS ALL WARRANTIES, INCLUDING BY WAY OF EXAMPLE ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY WARRANTY BASED ON COURSE OF DEALING OR USAGE OF TRADE OR THAT THE USE OF THE PRODUCTS WILL AT ALL TIMES BE UNINTERRUPTED OR ERROR FREE OR SECURE.. The foregoing disclaimer does not apply to the extent expressly prohibited by law.**

VII. Limitation of Damages and Liability

Notwithstanding the provisions on liability for defects and other special provisions agreed in these Terms and Conditions of Sale, contractor partner agrees with us on the following provisions:

1. EXCEPT WHERE EXPRESSLY PROHIBITED BY APPLICABLE LAW, IMPLEN, ITS AFFILIATES, EMPLOYEES, AGENTS, LICENSORS AND SUCCESSORS OR ASSIGNS SHALL NOT BE LIABLE TO THE CONTRACT PARTNER OR ANY THIRD PARTY WITH RESPECT TO THE PRODUCTS, THE SOFTWARE, ANY SERVICES, OR ANY OTHER MATTERS RELATING TO OR ARISING FROM THESE TERMS AND CONDITIONS OR ANY USE OR INABILITY TO USE THE PRODUCTS, REGARDLESS OF THE THEORY OR CAUSES OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, FRAUD, MISREPRESENTATION AND OTHER TORTS, FOR:
 - a. ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY THEREOF IN ADVANCE. LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF SAVINGS, LOSS OF DATA, LOSS OF REPUTATION, OR OTHER LOSS; OR
 - b. ANY DIRECT OR COMPENSATORY DAMAGES IN THE AGGREGATE IN EXCESS OF THE PURCHASE PRICE ACTUALLY PAID BY CONTRACT PARTNER FOR THE PRODUCT (OR ANY SOFTWARE) OR SERVICE THAT GIVES RISE TO THE CLAIM FOR DAMAGES, AND IF NO FEE WAS PAID OR IF THE CLAIM DOES NOT RESULT FROM A SPECIFIC PRODUCT OR SERVICE, THEN AN AMOUNT NOT TO EXCEED TEN THOUSAND UNITED STATES DOLLARS (\$10,000).
2. The limitation of liability in Clause 1.b. above does not apply to damages caused by the gross negligence or willful misconduct of Implen.
3. The parties agree that the foregoing limitations of damages and liability are essential to and reasonable in light of the pricing offered to contract partner for the products and services. Nothing herein limits in any manner any protection from claims and damages that may be available to Implen or its affiliates, employees, agents, successors or assigns under German law or other local law in the place where a claim is brought.
4. You agree that any claim you might have against us with respect to the products or any services must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred.

VIII. Hazard Warning

1. It is expressly pointed out that all products are intended only for laboratory and research purposes. We therefore only supply public research, testing and teaching institutions, technical businesses or the relevant industry. We therefore exclude any liability for damage which could occur due to any improper handling or any household application or application on human beings and animals. We expressly prohibit any passing on of poisonous (hazardous) materials to private individuals. It is also expressly pointed out that the absence of a hazard label does not mean that a product is harmless. Furthermore, we exclude any liability for personal injury - or damage to property - caused by any improper handling or storage of the products at our contract partner's place of business. In the event that there are relevant national or international laws or regulations governing the market including delivery, storage, processing or trade with particular products, the contract partner must also comply with any such laws and regulations.
2. Our contract partner is under an obligation to indemnify and hold us harmless against any third-party claims, of whatever nature, based on any unlawful or incorrect application of our goods or any application of our goods without any official approval which is required or any application of our goods which is in breach of the above provisions of these Terms and Conditions of Sale or because of any other improper use or use in combination with third party products. The indemnity obligation also includes a duty to indemnify us for any costs of legal defense (e.g. court fees and lawyers' costs).

IX. Licenses

In the event that our products are equipped with software pertaining thereto the following is pointed out: The software is protected by copyright. The license fee is included in the cost of the product. Our contract partner is granted only the rights set forth in the EULA to use the software only for the product. The software may be transferred to a third party only in combination with the product. Any and all of our contract partner's rights of use shall lapse upon assignment. Any copies of the software which exist must be deleted or returned to us.

X. Third-Party Industrial Property Rights

If you are the subject of a third party claim alleging that our product infringes industrial property rights or copyrights and the third-party's right exists pursuant to the laws of the Federal Republic of Germany, then we will indemnify and defend you against such a third party claim, on condition that you notify us (by notice addressed to the company's President) in writing within ten days of receiving the claim or learning of it, whichever comes first, and provide us reasonable assistance and cooperation to resolve it, and allow us to control the defense and resolution of the claim with our own attorneys and at our cost. You may participate with your own attorneys at your cost. We will pay our costs of defending and resolving the claim and any damages finally awarded to the third party or payable in a settlement that we have approved in writing. Our obligations in this Clause do not include claims that arise or result from any modifications made to the products other than by us, or the combination of our products or any part of it with products, data, devices or systems not produced by us. This Clause states the only remedy and our sole obligations with respect to claims of infringement or violation of industrial or intellectual property rights anywhere,

XI. Export Regulations

In the event that our goods are subject to export control provisions (in particular licenses, permits and approvals), we shall ensure that such provisions are complied with when we ship the product to the contract partner. Our contract partner must comply with any provisions on importing the goods into our contract partner's country or into a third country, and is prohibited from re-exporting or shipping any products into any country to which such re-export or shipping is prohibited by law or which require a prior license or authorization.

XII. Sale of the Products

In the event that our products are sold, our contract partner must pass on its contractual obligations to the purchaser (in particular any restrictions on the rights of use to the software in accordance with Clause X above; compliance with export regulations).

XIII. Place of Performance and Jurisdiction

The place of performance for both parties is Westlake Village, CA. The exclusive place of jurisdiction for any and all disputes which arise either directly or indirectly out of this contractual relationship shall, for both parties, be Westlake Village, CA. This shall also apply to any special actions for deciding claims arising out of any bill of exchange or cheque; we can, however, also sue the contract partner at any other place of jurisdiction applicable to the contract partner to avoid imminent harm to our business interests or to industrial or intellectual property.

XIV. Final Provisions

The contractual relationship between the contract parties and all disputes shall be governed by the laws of the State of California. The provisions of the United Nations Convention on the International Sale of Goods ("CISG") shall not apply. In the event that our Terms and Conditions of Sale are void in part or contain a gap, the validity of the remaining provisions shall not thereby be affected. In the event that only part of a provision is void this shall apply only in the event that the void part of the provision can be severed from the valid part. These Terms and Conditions of Sale are binding upon the parties hereto and their respective successors and assigns and any transferees of the products as permitted by this Agreement.

Implen, Inc.
End-User License Agreement (EULA)

IMPORTANT – THIS IS A LEGAL AGREEMENT BETWEEN YOU AND IMPLEN GMBH / IMPLEN, INC. AND ITS SUCCESSORS AND ASSIGNS (“LICENSOR”), AND STATES THE TERMS AND CONDITIONS THAT APPLY TO YOUR RIGHT TO USE THE SOFTWARE THAT IS PROVIDED TO OR DOWNLOADED BY YOU IN CONNECTION WITH THE IMPLEN® DEVICE (THE “DEVICE”), INCLUDING ANY EMBEDDED SOFTWARE, CLIENT-SIDE SOFTWARE, APPS AND ALL PATCHES, UPDATES, UPGRADES AND NEW RELEASES THAT ARE PROVIDED TO YOU OR THAT YOU DOWNLOAD (INDIVIDUALLY AND COLLECTIVELY, THE “SOFTWARE”).

YOUR ACCESS, USE AND DOWNLOAD OF ANY OF THE SOFTWARE (INCLUDING YOUR USE OF THE SOFTWARE IN CONNECTION WITH THE USE OF THE DEVICE) IS CONDITIONED UPON AND SUBJECT TO YOUR ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS CONTAINED IN THIS EULA, AS THEY GOVERN YOUR USE OF THE SOFTWARE. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU DO NOT HAVE THE RIGHT TO USE THE SOFTWARE OR THE DEVICE. LICENSOR IS WILLING TO LICENSE THE USE OF THE SOFTWARE TO YOU ONLY IF YOU ACCEPT ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT.

YOU WILL ACCEPT THIS EULA AND ITS TERMS AND CONDITIONS BY THE FIRST TO OCCUR OF USING THE DEVICE, DOWNLOADING THE SOFTWARE, OR PROVIDING PAYMENT FOR THE DEVICE UPON AN INVOICE OR OTHER DOCUMENT THAT EXPRESSLY REFERENCES THESE TERMS AND CONDITIONS.

LICENSE GRANT

Conditioned on your continued compliance with the terms and conditions of this EULA and the payment of all applicable fees for the Devices, any related services and any related charges imposed by Licensor with respect t, this EULA provides You with a personal, limited, non-exclusive, non-transferable, and non-sublicenseable license to use the Software solely in connection with a Device that you have purchased from Licensor or a distributor or reseller authorized by the Licensor, for Your internal business purposes. The Software can only be used in connection with a permitted use of the Device as expressly set forth in the documentation and instructions for the Device.

When Licensor provides Software for You to download, you may copy such Software in connection with downloading and storing it, solely for use in connection with the Device. Licensor is not responsible for malfunctions, failures, inaccuracies or other issues that result from the download or installation of any Software on any personal computer, laptop, mobile device or other computing device, or from any misuse of the Software or the Device. For Software downloaded from online mobile app stores, you must review and comply with any applicable terms and conditions posted by the applicable store operator, including any modifications posted by the app store operator.

You may transfer the Software in connection with a permitted sale or transfer by You of the Device that contains the Software, on the condition that You provide a copy of or prominent reference to this EULA to the transferee or purchaser.

For purposes of this Agreement, "You" means the company, entity or individual whose funds are used to pay for the Device and any of such company or entity's employees who use the Software as part of using the Device, and any other authorized individual that downloads, installs, accesses, or otherwise uses the Software in connection with the Device. In accordance with the foregoing, You acknowledge and agree that You are solely responsible for any actions or omissions taken by any individual that downloads, installs, accesses, or otherwise uses the Software on your behalf or through your Device or systems.

At all times, You represent and warrant to conduct your activities with respect to the Software in accordance with this EULA. In addition, You agree to assume all responsibility for your use, and the results of your use, of the Software, including meeting any requirements of your contracts with third parties. You agree to be responsible for and to abide by all applicable laws, regulations, rules, and guidelines with respect to your use of the Software and any activities You conduct using the Software. You also acknowledge and agree that use of the Internet for downloading Software is solely at your own risk.

RESTRICTIONS

The foregoing license is limited. You may not: (i) use, copy, store, reproduce, transmit, distribute, publish, post online, display, rent, lease, sell, modify, or commercially exploit the Software (or any part thereof) in any manner not expressly permitted by this Agreement, including, without limitation, for re-sale or distribution or for use for the benefit of others in a service bureau arrangement, (ii) reverse engineer, decompile, disassemble, translate, or create any derivative work of the Software (or any part thereof); (iii) access, link to, seek to derive or use any source code from the Software (or any part thereof); (iv) erase or remove any proprietary or intellectual property notice contained in or on the Software or provided with the Device or downloadable from Licensor's site (or any part thereof); (v) access or use the Software or its documentation to create or assist another to create a competing product or service, for an unlawful purpose, or in violation of any privacy policy, for email spam, with unlawful content, to distribute malware, or for collecting or scraping data from third parties without their express consent; or (vi) use or permit use of the Software (or any part thereof) for or by any third party. You acknowledge and agree that exceeding the scope of the license herein shall be a material breach of this Agreement and subject to the termination provisions set forth herein.

No maintenance and support or other services of any type are required to be delivered by Licensor pursuant to this EULA.

SUPPORT

Licensor may periodically make available Software fixes, updates or new releases through automatic distribution and installation to Your and other users' Devices. To the extent required under any applicable law, You consent to receive these automatic Software distributions. Devices not operating or connecting with current Software may not operate properly.

PROPRIETARY RIGHTS

This EULA does not provide a transfer or assignment of any rights or a sale of Software. Licensor (and its own applicable third party licensors) retains all ownership right, title and interest in and to the Software and all copies thereof, including its associated interfaces, programs, software, code, libraries and documentation. Except as expressly provided herein, Licensor does not grant any other express or implied right to You or any other person under any intellectual or proprietary rights. Accordingly, unauthorized use of the Software may violate intellectual property or other proprietary rights laws as well as other domestic and international laws, regulations, and statutes, including, but not limited to, U.S. copyright, trade secret, patent, and trademark law.

OPEN SOURCE

The Software may contain open source code licensed or made available to Licensor subject to open source and public licenses. You acknowledge and agree that You will not take or assist anyone to take any action that violates the terms of such open source and public licenses. The current listing of open source programs contained, in whole or in part, in Software, can be found at www.implen.de/opensource. Please become familiar with those terms.

CONFIDENTIALITY

You acknowledge and agree that the Software and related documentation is confidential information of Licensor and contains trade secrets that derive value from not being publicly known to third parties. You agree to treat the Software and such documentation with confidentiality and not to allow use for a purpose other than use of the Device or disclosure to anyone other than Your employees, collaborators and contractors who have a need-to-know for purposes of using the Device on your behalf or in connection with Your projects.

GOVERNMENT RESTRICTED RIGHTS

As applicable, the Software is provided to the United States of America and its or their respective instrumentalities, agencies, or offices, regardless of form (collectively, the "Government") with RESTRICTED RIGHTS. All Licensor products and materials, including the Software, are commercial in nature and were not first produced in the performance of any Government contract. Accordingly, the software and documentation available through the Software are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are licensed to Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions of this EULA.

WARRANTY DISCLAIMER

LICENSOR'S WARRANTY FOR THE DEVICE, IF ANY, IS STATED ON THE PURCHASE TERMS PROVIDED BY LICENSOR AND NOT IN THIS EULA. YOU ACKNOWLEDGE AND AGREE THAT LICENSOR MAKES NO WARRANTIES OR REPRESENTATIONS TO YOU IN THIS EULA AND DISCLAIMS ALL WARRANTIES RELATING TO THIS SOFTWARE OR ITS OPERATION, WHETHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, SECURITY, NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR AVAILABLE UNDER ANY STATE STATUTE GOVERNING SOFTWARE OR INFORMATION SERVICES. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE IS ERROR FREE OR WILL ALWAYS OPERATE UNINTERRUPTED.

LIMITATION OF LIABILITY

IN NO EVENT SHALL LICENSOR OR ITS OWN LICENSORS AND SUPPLIERS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF THE SOFTWARE OR ANY INFORMATION OR MATERIALS AVAILABLE THROUGH THE SOFTWARE, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IN ADDITION, LICENSOR ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY CLAIMS THAT MAY RESULT DIRECTLY OR INDIRECTLY FROM THE RESULTS YOU ACHIEVE USING THE SOFTWARE OR WHICH RELATE TO THE STORAGE OF ANY DATA OR FOR THE DELIVERY, SECURITY, OR AVAILABILITY OF ANY DATA. WITHOUT LIMITATION OF THE FOREGOING, TOTAL LIABILITY OF LICENSOR FOR ANY REASON WHATSOEVER RELATED TO THE SOFTWARE, THE USE OR INABILITY TO USE THE SOFTWARE, OR FOR ANY CLAIMS RELATING TO THIS EULA SHALL NOT EXCEED IN THE AGGREGATE US\$5,000.

SEVERABILITY

In the event any provision of this Agreement is found by an arbitrator or court of competent jurisdiction to be invalid, void, or unenforceable, You agree that the invalidity, voidness, or unenforceability shall affect neither the validity of this EULA nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

GOVERNING LAW

This Agreement has been made in and will be construed and enforced solely in accordance with the laws of the State of California, U.S.A., without application of conflicts of laws provisions. Exclusive venue shall be in the courts in California. You also acknowledge and agree that any applicable state law implementation of the Uniform Computer Information

Transactions Act (including any available remedies) shall not apply to this Agreement and is hereby disclaimed. Any claim You might have against Licensor with respect to the Software must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred.

LICENSOR ENTITLED TO INJUNCTIVE RELIEF

You acknowledge that Licensor reserves the right, at any time and without notice, to monitor compliance with the terms and conditions of this EULA and to take appropriate steps to otherwise protect its rights in the Software by monitoring use of the Software and by incorporating security and management technology into the Software. You shall therefore not, nor shall You permit any third party to, disable, circumvent, or otherwise avoid any security device, mechanism, protocol, or procedure established by Licensor for use of or with the Software. Without limiting any other remedy at law or equity, in the event of the unauthorized use of the Software or Your breach of any of the provisions set forth in this EULA, You agree that Licensor shall have the right to an immediate injunction against the unauthorized use of the Software or the continued breach of this EULA.

TERM AND TERMINATION

Your right to use the Software terminates automatically if You do not accept these terms and conditions. Licensor also reserves the right at any time and on reasonable grounds, which shall include, without limitation, any reasonable belief of fraudulent or unlawful activity, any failure to pay any applicable fee, or any actions or omissions that violate any term or condition of this EULA, to terminate immediately this EULA with You for breach. Termination or expiration of this Agreement will be effective immediately upon notice. In the event of termination, the license granted to You ends and You must cease using the Software and destroy or delete from your computer, laptop, work station, or network all copies of the Software (and any associated materials) in your possession. Moreover, the provisions concerning proprietary rights, confidentiality, warranties and warranty disclaimer, limitation of liability, governing law, enforcement, termination, entire agreement, and notice terms will survive the termination or expiration of this Agreement for any reason.

AMENDMENTS AND SOFTWARE UPDATES

Licensor may promulgate additional or modified terms and conditions by providing You in writing or electronically a copy of such revised terms (or notice thereof). Licensor may also provide updates, upgrades and/or changes to any aspect of the Software at any time. You may elect by written notice to Licensor within five (5) days of the change notice or changed Software to terminate this EULA and Your use of the Software. Your continued use of the Software following any such change to the Software or the EULA will be deemed acceptance of the change.

ENTIRE AGREEMENT

This EULA and the documentation, installation and use instructions provided to You by Licensor represent the entire agreement between You and Licensor with respect to the Software and supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between You and Licensor or any distributor or reseller with respect to the Software.