

APPERTURE SOLUTIONS TERMS AND CONDITIONS OF SALE

These terms and conditions, the attendant quotation or acknowledgment, and all documents incorporated herein by reference bind APPERTURE SOLUTIONS ("Seller"), upon complete execution of this agreement, for the sale of goods ("Goods"); and any services to be provided hereunder ("Services") and bind the buyer ("Buyer") and constitute the entire agreement ("Agreement") between Buyer and Seller regarding such Goods and Services. Seller shall not be bound by any terms which are additional to or inconsistent with this Agreement, and which appears in Buyer's purchase order or other communication from Buyer, unless expressly agreed upon in writing by Seller.

1. **TERMS OF PAYMENT:** Subject to the approval of Seller's credit department, terms are F.O.B. shipping point, freight pre-pay and add, net 30 days from date of Seller's invoice in U.S. currency, except for applicable milestone payments set forth in Section 12 below, or export shipments for which Seller may require other arrangements. If any payment owed to Seller hereunder is not paid when due, it shall bear interest, at a rate to be determined by Seller which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller shall have the right, in addition to other remedies including an action for damages, either to terminate the Agreement or to suspend further deliveries, work, or other performance services under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due, causes the work to be stopped or otherwise defaults in the performance of or in compliance with its responsibilities or obligations under this Agreement. Buyer shall be liable for all expenses attendant to collection of past due amounts or other damages for breach of this Agreement, including attorney's fees.
2. **PRICES:** Unless otherwise specified by Seller, Seller's price for the Goods and Services shall remain in effect for thirty (30) days after the date of Seller's quotation or acceptance of the order for the Goods and Services whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods and performance of Services pursuant to Seller's standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods and Services to Seller's prices in effect at the time the order is released to final manufacture. Notwithstanding any of the foregoing to the contrary, the price for Goods sold by Seller, but manufactured by others, shall be Seller's price in effect at the time of shipment to Buyer.
3. **DELIVERY AND DOCUMENTATION:** All shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to process the order properly. Seller shall provide Buyer with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Seller, they shall be provided to Buyer at Seller's price then in effect.
4. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for nonperformance due to changes ordered by Buyer, delay by Buyer, acts of God, adverse weather conditions, unavoidable consequences, war, riot, fire, labor disputes, unusual delay in deliveries, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or unforeseen circumstances or causes beyond Seller's reasonable control.
5. **TERMINATION AND SUSPENSION BY BUYER:** Buyer may terminate or suspend its order for any or all of the Goods and Services covered by the Agreement, provided that Buyer gives Seller reasonable advance written notice of such termination or suspension and reimburses Seller for all losses, damages, costs and expenses arising from such termination or suspension, including but not limited to restocking fees incurred for Goods and de-mobilization charges for Services.
6. **LIMITED WARRANTY:** Subject to the limitations contained in Section 7 and except as otherwise expressly provided herein, Seller warrants that the firmware will execute the programming instructions provided by Seller, and that the Goods manufactured, or Services provided by Seller will be free from defects in materials or workmanship under normal use and care until the expiration of the applicable warranty period. Goods are warranted for twelve (12) months from the date of initial installation or eighteen (18) months from the date of shipment by Seller, whichever period expires first. Consumables and Services are warranted for a period of 90 days from the date of shipment or completion of the Services. Products purchased by Seller from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. Buyer agrees that Seller has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If Buyer discovers any warranty defects and notifies Seller thereof in writing during the applicable warranty period, Seller shall, at its option, promptly correct any errors that are found by Seller in the firmware or Services, or repair or replace F.O.B. point of manufacture that portion of the Goods or firmware found by Seller to be defective, or refund the purchase price of the defective portion of the Goods/Services. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources, unsuitable environmental conditions, accident misuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by an authorized Seller representative. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the only warranty made by Seller and can be amended only in a writing signed by an authorized representative of Seller. Except as otherwise expressly provided in the Agreement, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES.
7. **LIMITATION OF REMEDY AND LIABILITY:** SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT UNDER THE LIMITED WARRANTY CLAUSE IN SECTION 6. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS AND SERVICES DELIVERED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL.
8. **PATENTS:** Subject to the limitations contained in Section 7, Seller shall defend any suits brought against Buyer based on a claim that use of the Goods delivered by Seller constitutes an infringement of a valid patent of the United States, and shall pay any damages awarded therein against Buyer, provided that Buyer: promptly notifies Seller in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Seller for the defense of such suit. In the event that only the Goods delivered by Seller are held to be infringing in such suit and their use is enjoined, Seller shall, at Seller's option and expense, procure for Buyer the right to continue using the Goods, replace them with a non-infringing product or modify them so they become non-infringing. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore, if infringement is based upon the use of Goods in connection with goods not delivered by Seller or in a manner for which the Goods were not designed by Seller or if the Goods were not designed by Seller or if the Goods were designed by Buyer or were modified by or for Buyer in a manner to cause them to become infringing.
9. **INSTALLATION:** Unless Installation Services are included in Seller's quotation, Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Goods.
10. **TAXES:** Any tax or governmental charge or increase in same hereafter becoming effective increasing the cost to Seller of producing, acquiring, selling, or delivering the Goods or the Services, and any tax now in effect or increase in same payable by the Seller because of the manufacture, sale or delivery of the Goods or the Services may at Seller's option, be added to the price herein specified.
11. **SOFTWARE AND FIRMWARE:** Buyer shall execute a nonexclusive, royalty free license only for Buyer's use of any and all software and firmware and is hereby granted a nonexclusive royalty free license for Buyer's use of the software and firmware modification designed by Seller for Buyer. It is recognized and agreed that title to all software and firmware provided by Seller shall remain with Seller or with the manufacturer and that such software and firmware shall be furnished to, and used by, Buyer only after execution of a standard license agreement.
12. **MILESTONE PAYMENTS:** Unless otherwise provided in Seller's written quotation, periodic milestone payments shall be made by Buyer if the contract price exceeds \$25,000. In such cases, invoices shall be issued by Seller and paid by Buyer based on the following milestones: Milestone 1: 30% of price upon acceptance of order by Seller. Milestone 2: 30% of price upon release by Seller's supplier of approved bills of material to manufacturing for assembly or upon release of approved submittal data. Milestone 3: 40% of price upon shipment of the Goods by Seller or completion of Services. In the event the Goods are shipped in partial shipments, the Milestone 3 payment will be prorated over such shipments.
13. **BUYER SUPPLIED DATA:** To the extent that Seller has relied upon any specifications, information, representation of operating conditions or other data supplied in writing by Buyer to Seller in the selection of the Goods or Services and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such condition shall be null and void.
14. **GENERAL PROVISIONS:** (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Seller. (e) The Agreement is formed and shall be construed, performed, and enforced under the laws of the State of North Carolina.
15. **NONSOLICITATION OF SELLER'S EMPLOYEES:** Seller makes a considerable investment in its employees, and Customer agrees not to directly or indirectly hire or employ any of Seller's employees who provide Services to Buyer during the term of this Agreement and for a period of one (1) year thereafter. It is further agreed that any breach of this agreement will cause immediate and irreparable injury to Seller. In the event of such breach, Buyer agrees that Seller shall have the right to, in addition to other remedies available to it in law or equity, including an injunction, to be paid by Buyer, as liquidated damages, an amount equal to the total compensation paid by Seller to the affected Seller employee over the preceding twelve (12) months, or the total compensation to be paid by Buyer to the affected employee during their first twelve (12) months of employment with Buyer, whichever is greater.