

TERMS AND CONDITIONS

For the purposes of these TERMS AND CONDITIONS OF SALE ("Terms and Conditions"), "contract" means the agreement between Microscan Systems, Inc. ("Supplier") and Buyer arising as a result of Buyer's submission of an order for Supplier's products. Individually, Supplier and Buyer are each a party; collectively, they are parties. Such contract shall be deemed to incorporate and be governed by these Terms and Conditions. No term or condition of Buyer's order additional to or different from these Terms and Conditions shall become part of the contract unless explicitly agreed to in writing by Supplier. These Terms and Conditions may be revised by Supplier from time to time, in Supplier's sole discretion. Supplier will notify Buyer of revisions to these Terms and Conditions forty-five (45) days prior to the revised Terms and Conditions taking effect. Buyer's failure to object in writing to any provision contained in any communication from Supplier before the "effective date" shall be construed as acceptance of any such provision and shall not be construed as a waiver of these Terms and Conditions.

1. Quotations and Orders: Prices, specifications and dates for delivery referenced in Supplier's quotations are for information purposes only and shall not be binding on Supplier until all technical requirements have been agreed upon and Supplier has accepted Buyer's order. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates. Quotations terminate if the Buyer does not place an order with the Supplier within 60 days.

2. Taxes: Prices and fees do not include taxes, transport charges, insurance and export and/or import charges or duties including without limitation sales tax, value added tax, use or excise taxes, applicable to the Products sold and or Services supplied under any Contract, which taxes and other charges may, in the Supplier's discretion, be added by the Supplier to the sale price and or fees or billed separately and which taxes and other charges shall be paid by the Buyer unless the Buyer provides the Supplier with any necessary

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tax exemption certificate. Unless otherwise agreed in writing, the
Buyer shall be liable to pay the Supplier's charges for transport,
packaging, insurance and export and/or import clearance.

3. Shipment and Delivery: All products will be shipped EXW (Ex Works) Supplier's premises. Delays of convenience, within fourteen (14) days of the acknowledged shipping dates, will be invoiced at 50% of order value on originally scheduled ship date. Delays for convenience will not be accepted beyond sixty (60) days. Orders containing custom "FIS" products or integrated systems cannot be delayed or cancelled after receipt of Sales Order Acknowledgement. In the absence of specific instructions, Supplier will select the carrier and ship "collect". LVS 7000, 7100 and 7500 systems ship approximately 45 business days after receipt of order. Title and risk of loss or damage to any product shall pass from Supplier to Buyer upon the product being packed ready for delivery to carrier. Any claims for loss, damage or mis-delivery thereafter shall be filed with the carrier. All products shall be deemed finally inspected and accepted within ten (10) days after delivery unless notice of rejection is given by Buyer in writing to Supplier within such period. Acceptance shall constitute acknowledgement of full performance by Supplier of all obligations under the contract except as stated in Section 9 (Limitation of Warranties). The Supplier reserves the right to make delivery of Products by instalments and to tender a separate invoice in respect of each instalment. When delivery is to be by instalments or the Supplier exercises its right to deliver by instalments or if there is delay in the delivery of any one or more instalments for whatever reason the Buyer shall not be entitled to treat the Contract as a whole as repudiated. All products returned are subject to the then current Microscan Product Return Process Policy. Microscan reserves the right to change this policy at will.

4. Terms of Payment: Each shipment shall be a separate transaction and Buyer will be invoiced on date of dispatch. Unless otherwise stated on Supplier's invoice, terms of payment shall be net thirty (30) days from date of invoice. Orders of LVS 7000 systems \$20,000 and higher require 50/40/10 payment terms (50% deposit with placement

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5. Security Interest: Buyer hereby grants to Supplier a purchase money security interest in all Supplier products sold to Buyer as security for the punctual performance by Buyer of all of its obligations hereunder. Supplier may, at its discretion, file the Buyer's order and these terms

and conditions as a financing statement to evidence and perfect said security interest.

6. Force Majeure: Notwithstanding anything to the contrary in these Conditions, the Supplier shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of Products or Services being prevented, delayed or rendered uneconomic by reason of circumstances or events beyond the Supplier's reasonable control. If due to such circumstances or events the Supplier has insufficient stocks to meet

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all its commitments the Supplier may apportion available stocks between its customers at its sole discretion.

7. Equipment: Supplier may modify specifications provided the modifications do not adversely affect the performance of the equipment to be supplied under the contract ("the equipment"). In addition, Supplier may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or non-availability of materials from suppliers. All descriptions, illustrations and any other information relating to the Products contained in the Supplier's catalogues, brochures, price lists, advertising material and any sales or other particulars or literature are made by way of general description, are approximate only and for the general guidance and information of the Buyer. They shall not constitute warranties or representations by the Supplier nor shall they form part of any Contract.

8. Software and Proprietary Information: Buyer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by the Supplier under or in the course of provision of any Services (the "Works"), wherever in the world

enforceable, including without limitations all right title and interest in and to the Services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of the Supplier and the Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these Conditions. The Supplier grants to the Buyer a revocable, non-exclusive, non-transferable license to use such of the Works as are necessary, and to the extent necessary, for the Buyer to obtain and utilize the intended benefit of the Services. Each party undertakes to keep confidential, not use for its own purposes and not without the prior written consent of the other party disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to

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9. Limited Warranty; Remedies; Exclusions: A. Supplier warrants that all equipment shall be free from defects in material and workmanship under normal use for a period of one year from date of shipment to Buyer save that Supplier does not warrant that operation of the software will be completely uninterrupted or error free or that all program errors will be corrected. Buyer shall be responsible for determining that the equipment is suitable for Buyer's use and that such use complies with any applicable local, state or federal law. Provided that Buyer notifies Supplier in writing of any claimed defect in the equipment immediately upon discovery and any such equipment is returned to the original shipping point, transportation charges prepaid, within one (1) year from date of shipment to Buyer and upon examination Supplier determines to its satisfaction that such

equipment is defective in material or workmanship, i.e. contains a defect arising out of the manufacture of the equipment and not a defect caused by other circumstances, including, but not limited to accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing, Supplier shall at its option repair or replace the equipment, shipment to Buyer prepaid. Supplier shall have reasonable time to make such repair or to replace such equipment. Any repair or replacement of equipment shall not extend the period of warranty. This warranty is limited to a period of one (1) year, without regard to whether any claimed defects were discoverable or latent on the date of shipment.

B. If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to Supplier under this contract or otherwise, all warranties and remedies granted under this Section 9 may, at Supplier's option, be terminated.

C. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT AND ANY DEFECTS THEREIN OF ANY NATURE WHATEVER, INCLUDING

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WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUPPLIER SHALL NOT BE LIABLE FOR, AND BUYER ASSUMES ALL RISK OF, ANY ADVICE OR FAILURE TO PROVIDE ADVICE BY SUPPLIER TO BUYER REGARDING THE EQUIPMENT OR BUYER'S USE OF THE SAME. UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE LIABLE TO BUYER UNDER ANY TORT, NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY CLAIM AND BUYER AGREES TO WAIVE SUCH CLAIMS. SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE PRODUCTS OR ANYTHING DONE IN CONNECTION WITH THIS CONTRACT, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE AS SET FORTH IN SUBSECTION 9A HEREOF

AS LIMITED BY SUBSECTION 9B HEREOF. THIS EXCLUSIVE REMEDY SHALL NOT HAVE FAILED OF ITS ESSENTIAL PURPOSE (AS THAT TERM IS USED IN THE UNIFORM COMMERCIAL CODE) PROVIDED THAT THE SUPPLIER REMAINS WILLING TO REPAIR OR REPLACE DEFECTIVE EQUIPMENT (AS DEFINED IN SUBSECTION 9A) WITHIN A COMMERCIALLY REASONABLE TIME AFTER RECEIVING SUCH EQUIPMENT. BUYER SPECIFICALLY ACKNOWLEDGES THAT SUPPLIER'S PRICE FOR THE EQUIPMENT IS BASED UPON THE LIMITATIONS OF SUPPLIER'S LIABILITY AS SET FORTH IN THIS CONTRACT.

10. Patents: If any claim is made against the Buyer that the Products or Services infringe any third party's US patent, the Supplier shall indemnify the Buyer against all losses, damages, costs and expenses awarded against, or incurred by, the Buyer in connection with the claim provided that: (i) the Supplier is given full control of any proceedings or negotiations in connection with any such claim; (ii) the Buyer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations; (iii) except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier; (iv) the Buyer shall do nothing which would or might vitiate any insurance policy or cover which the Buyer may have in relation to such infringement and shall use its best endeavors to recover any

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Supplier shall be entitled to require the Buyer to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Supplier is liable to indemnify the Buyer under Section 11, which steps may include (at the Supplier's option) accepting from the Supplier non-infringing, modified or replacement Products or Services. The Supplier shall have no obligation or liability under Section 11 insofar as the infringement arises from: (i) any additions or modifications made to the Products and/or Services in question, otherwise than by the Supplier or with its prior written consent; (ii) any information provided by the Buyer to the Supplier including without limitation any specification; (iii) performance by the Supplier of any work required to any Products, or performance of any Services, in compliance with the Buyer's requirements or specification; (iv) a combination with or an addition to equipment not manufactured or developed by the Supplier; or (v) the use of Products beyond that scope established by the Supplier or approved in writing by the Supplier.

11. Limitation of Liability and Buyer Indemnity: NOTHING IN THESE CONDITIONS SHALL EXCLUDE OR LIMIT THE SUPPLIER'S LIABILITY TO THE EXTENT THAT THE SAME MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW. IN NO EVENT, REGARDLESS OF THE FORM OF ACTION, SHALL SUPPLIER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF THE SALE OF ITS PRODUCTS TO BUYER OR ARISING OUT OF ANYTHING DONE IN CONNECTION WITH THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF CLAIMS FOR LOSS OF USE, LOSS OF INCOME, LOSS OF REVENUE, BUSINESS, GOODWILL, OR PROFITS,

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AND CLAIMS ARISING OUT OF THIRDPARTY ACTIONS, REGARDLESS OF WHETHER SUCH THIRD-PARTY ACTIONS, OR ANY OTHER CLAIMS, LOSSES, OR DAMAGES, WERE REASONABLY

FORESEEABLE TO BUYER OR SUPPLIER. BUYER'S EXCLUSIVE REMEDY ARISING OUT OF ITS PURCHASE AND USE OF SUPPLIER'S PRODUCTS, OR ARISING OUT OF ANYTHING DONE IN CONNECTION WITH THE CONTRACT, SHALL BE FOR DAMAGES AND NO CLAIM OR CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WARRANTY AND STRICT LIABILITY), STATUTORY OR REGULATORY PROVISIONS, INDEMNITY, CONTRIBUTION, OR OTHERWISE, SHALL BE GREATER IN AMOUNT IN AGGREGATE THAN THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED. Buyer shall indemnify and hold harmless Supplier, its officers, agents, employees, subsidiaries, parents, affiliates and insurers from and against any and all liabilities, damages, losses, claims, lawsuits, including costs and expenses in connection therewith, for death or injury to any persons or loss of any property whatsoever, caused in any manner by Buyer's possession, use or operation of equipment.

12. Non-Waiver; Remedies: No waiver of any breach of these Terms and Conditions shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of the contract. All Supplier rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and nonexclusive and may be exercised singularly or concurrently.

13. Applicable Law; Dispute resolution; Severability: The validity, performance and construction of the contract shall be governed by the laws of the State of Washington, without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Conditions. Any claim, dispute or other matter in question arising out of or relating to this provision, shall be subject to mediation as a condition precedent to binding dispute resolution. Any mediation under this Agreement shall be administered

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14. Government Contracts: If the products to be furnished under the contract are to be used in the performance of a United States Government contract or subcontract, the Government contract number and a statement to that effect shall appear on Buyer's purchase order. If Buyer's purchase order includes all of said information and if said order is accepted in writing by Supplier, then those clauses of the applicable Government procurement regulations which are mandatorily required by Federal statute or regulation to be included in this contract shall be incorporated herein by reference. In all other events, said clauses shall not be incorporated herein by reference.

15. Export: Regardless of any disclosure made by Buyer to Supplier of the ultimate destination of Supplier product(s), Buyer shall not export

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either directly or indirectly any Supplier product, or any system
incorporating said product(s) either in contravention of statute or
regulation or without first obtaining all required licenses and permits
from the United States Department of Commerce and any other
relevant agencies or departments of the United States government.

16. Assignment: The contract shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. The contract is personal to Buyer, and Buyer may not assign any of its rights or delegate any of its obligations hereunder, in whole or in part, without the prior written consent of Supplier, which Supplier may withhold for any reason or no reason.

17. Entire Agreement; Modifications: This contract constitutes the entire agreement between the parties as relates to the sale of the equipment and no addition to or modification of any provision of said agreement, together with any agreement to which these Terms and Conditions are an exhibit or schedule, and shall be binding upon Supplier unless agreed to in writing by Supplier.

18. Notices: All notices given under the contract shall be in writing, mailed by first class mail, certified or registered, or delivered by hand to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice, and shall take effect when received.

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