

MICROSCAN SYSTEMS, INC. TERMS AND CONDITIONS OF SALE

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. Supplier’s failure to object in writing to any provision contained in any communication from Buyer 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 and Supplier has accepted Buyer’s order. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates.
- 2. Taxes:** Prices do not include sales or excise taxes, which shall be paid by Buyer unless Buyer provides Supplier with any necessary tax exemption certificate.
- 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 cannot be delayed or canceled after receipt of Sales Order Acknowledgement. In the absence of specific instructions, Supplier will select the carrier and ship “collect”. 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 misdelivery 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).
- 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, unless Supplier requires, in its sole discretion, payment in advance. If Buyer fails to make any payment due hereunder when due, Supplier may recover, in addition to the payment, interest thereon at the rate of 1-1/2% per month and reasonable attorney’s fees and costs.
- 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:** Supplier shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any event beyond the control of Supplier. If any such event occurs, Supplier may allocate production and deliveries among Supplier’s customers.
- 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.
- 8. Software and Proprietary Information:** Supplier shall at all times have and retain title and full ownership of all software, firmware programming routines, and documentation thereof supplied by Supplier for use with the equipment, and of all copies thereof made by Buyer (collectively “software”). Supplier grants Buyer a non-exclusive and non-transferable license to use such software solely for use with the equipment. Buyer shall take all reasonable steps to protect Supplier’s proprietary interest in the software, and any other proprietary information of Supplier, and shall not transfer or otherwise provide the software to any third party.
- 9. Limitation of Warranties:**
 - 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 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: Supplier shall defend any suit or proceeding brought against Buyer to the extent that it is based on a claim that any equipment manufactured by Supplier infringes in construction or design a United States patent, and shall indemnify Buyer against all costs, damages and expenses finally awarded against Buyer provided that Buyer notifies Supplier promptly in writing of any such claim and gives Supplier full and complete authority, information and assistance for the defense of such claim and provided further that Supplier shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If any such equipment is held in construction or design directly to infringe any United States patent and the use of said equipment is enjoined, or in case any equipment may, in the opinion of Supplier, be held to infringe, Supplier may, at its expense and option, either (a) procure for Buyer the right to continue using said equipment, (b) replace said equipment with a suitable noninfringing product, (c) suitably modify said equipment, or (d) refund the purchase price of said equipment, less depreciation at 20% per year, and accept its return. Supplier shall not be liable for any cost or expense incurred without Supplier's written authorization. Supplier shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification or from a combination with or an addition to equipment not manufactured or developed by Supplier or a modification of the equipment after delivery or the use of equipment beyond that established by Supplier or approved in writing by Supplier. THE FOREGOING STATES THE ENTIRE LIABILITY OF SUPPLIER, AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ALLEGED PATENT INFRINGEMENT BY THE SAID EQUIPMENT.

11. Limitation of Liability and Buyer Indemnity: 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, BUSINESS, GOODWILL, OR PROFITS, AND CLAIMS ARISING OUT OF THIRD-PARTY 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 conflict of laws provisions. 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 by the American Arbitration Association in accordance with its mediation procedures then in effect. The parties shall equally share the mediator's fee and any filing fees. If the parties do not resolve their dispute through mediation, the dispute shall be resolved in mandatory arbitration pursuant to an arbitration administered by the American Arbitration Association in accordance with its arbitration rules then in effect. The arbitrator(s) award shall be final and judgment may be entered upon it in accordance with applicable in any court having jurisdiction thereof. Any mediation or arbitration shall be held in Seattle, WA. If supplier is the substantially prevailing party, supplier will be entitled to and awarded, in addition to any other relief, its reasonable costs incurred, including attorneys' fees. Notwithstanding any attempts to resolve differences, any action brought by Buyer against Supplier arising out of this contract or Buyer's purchase and use of the equipment must be commenced within one year after such action accrues and in no event later than two years after date of shipment of such equipment. If any provision of these Terms and Conditions is held to be unenforceable, such holding shall not affect the enforceability of any other provision.

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 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.