

## SENSCOMP, INC.'S TERMS AND CONDITIONS OF SALE (ACKNOWLEDGMENT)

All sales of goods and/or services sold to Buyer by SensComp, Inc. ("Seller") are subject to these Terms and Conditions and those contained in Seller's Acknowledgment.

**1. AGREEMENT.** All orders are subject to approval by Seller. These Terms and Conditions of Sale (the "Agreement") supersede all prior written terms, understandings, purchase orders, assurances and offers. Buyer's acceptance of the goods or placement of an order for goods is subject to the Agreement and is conditioned upon consent to the Agreement. Seller shall not be deemed to have waived the following conditions if it fails to object to the conditions appearing in or attached to a Purchase Order. Buyer's acceptance of goods or services called for in a Purchase Order shall constitute its acceptance of the following Terms and Conditions. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER.

**2. PRICE AND TAXES.** Unless otherwise specified in writing, all prices are F.O.B. point of origin. Any prices quoted in writing shall be valid for thirty (30) days from issuance. Prices and specifications are subject to change without notice. Prices do not include sales, use, services, excise or similar taxes or any shipping or customs charges. (See paragraph 4). Buyer shall pay any sales, use, excise or similar tax attributable to the sale of the goods covered hereby, or shall provide Seller with tax exemption certificates acceptable to the taxing authorities.

**3. PAYMENT TERMS.** Terms of payment for Buyers in the United States ("U.S.") are one percent (1%) ten (10) days, net thirty (30) days from date of invoice unless otherwise specified by Seller in writing. In the event that payment is not received within such thirty (30) day period, any unpaid balance shall commence to bear interest at the rate of eighteen percent (18%) per annum from the 31<sup>st</sup> day after delivery. Terms of payment are subject to Seller's approval of Buyer's credit. Terms of payment for Buyers outside the U.S. are prepayment via wire transfer, certified check or money order, unless account has been approved for credit. Seller may change or withdraw credit amounts or payment terms at any time for any reason. If the goods are delivered in releases, Buyer shall pay for each release in accordance with the above payment terms. Payments received from Buyer may be applied by Seller against any obligation under this or any other written Agreement between Buyer and Seller. If Buyer fails to make any payment when due, Seller may suspend or cancel performance under any agreements in which Seller has extended credit to Buyer. Seller's suspension of performance may result in rescheduling delays. If, in Seller's judgment, Buyer's financial condition does not justify the payment terms specified herein, then Seller may terminate this Agreement unless Buyer immediately pays for all goods that have been delivered and pays in advance for all goods to be delivered. Termination in accordance with this clause shall not affect Seller's right to pursue any other available remedies.

**4. DELIVERY AND TITLE.** In the U.S. and Canada, all goods are shipped F.O.B. point of origin. All overseas International (outside the U.S. and Canada) goods are shipped EXW (Ex Works as defined in Incoterms 2000) Seller's facility or origin. Title to and risk of loss of all goods shall pass upon Seller's delivery of goods to carrier and Buyer is responsible for clearing the goods for export. Buyer shall pay all freight, handling, delivery (including, but not limited to, V.A.T., duty and customs), special packing and insurance charges for shipment of goods. Choice of carrier and shipping method and route shall be at the election of Seller. Seller shall have the right to deliver all goods covered hereby at one time or in portions from time to time. Delivery dates are estimates. Seller shall not be liable for any damage, loss or expenses incurred by Buyer if Seller fails to meet estimated delivery dates. Buyer shall be responsible for all information necessary and all costs incurred to comply with all applicable laws, regulations and related legal reporting obligations in the countries of destination. Buyer must provide all documentation and/or electronic transaction records to allow Seller and Buyer to meet export and customs related obligations, any local content/origin requirements, and to obtain Tariff and Trade Program duty avoidance(s) and/or refund benefits, where applicable.

**5. ACCEPTANCE.** Shipments will be deemed to have been accepted by Buyer upon delivery of said shipments to Buyer unless rejected upon receipt. Buyer shall perform whatever inspection or tests Buyer deems necessary as promptly as possible but in no event later than five (5) days after delivery, after which time Buyer will be deemed to have irrevocably accepted the goods. Any defect or discrepancy in shipment quantity must be reported to Seller in writing specifically noting any defects or discrepancies in the quality or quantity of goods received within five (5) working days of receipt of the goods.

**6. LIMITED WARRANTY.** Seller warrants that the goods it manufactures shall be free from defects in materials or workmanship for one (1) year from date of shipment, and that such goods will conform to Seller's written specifications and drawings. Seller warrants that at the time of delivery Seller has title to the goods free and clear of any and all liens and encumbrances. Buyer must give written notice of the defect to Seller within ten (10) days after Buyer first can determine that the goods fail to conform to Seller's limited warranty and within the one (1) year period from the date of shipment. Upon shipping prepaid to Seller, Seller will repair or replace, at no cost to Buyer, such goods as may be of defective material or workmanship. Buyers outside of the United States are to return the goods to their distributor for repair. If the goods furnished by Seller fail to conform to Seller's limited warranty, Buyer's sole and exclusive remedy against Seller shall be (at Seller's option) to repair or replace any such goods which are returned by Buyer during the applicable warranty period set forth above provided that (i) Seller is promptly notified in writing upon discovery by Buyer that such goods failed to conform to this Agreement with a detailed explanation of any alleged deficiencies, (ii) such goods are returned to Seller, F.O.B. Seller's plant, and (iii) Seller's examination of such goods shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper use, improper installation, unauthorized repair or improper testing. Seller shall have a reasonable time to make such repairs or replace such goods. Seller's warranties as herein above set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished hereunder.

**7. DISCLAIMER.** SELLER'S WARRANTY IS LIMITED TO REPLACING ANY GOODS THAT ARE PROVED TO BE DEFECTIVE. THIS IS BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM, WHETHER ARISING IN TORT OR CONTRACT. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM BUSINESS INTERRUPTION, LOST PROFITS, PERSONAL OR BODILY INJURY OR DEATH, OR DAMAGES TO, OR LOSS OF USE OF, ANY PROPERTY. NOTWITHSTANDING ANY OF THESE TERMS AND CONDITIONS, THE WARRANTIES SET FORTH SHALL APPLY IN CONNECTION WITH ANY SALES OF GOODS BY SELLER AND ARE IN LIEU OF ALL OTHER WARRANTIES, (INCLUDING, WITHOUT LIMITATION, ANY ADVERTISING MATERIALS, BROCHURES, WEBSITE, OR OTHER DESCRIPTIVE LITERATURE), EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**8. CANCELLATION/RETURNS.** Orders accepted by Seller may be cancelled only upon written consent of Seller. Where Seller consents to a cancellation or other withdrawal of an order for goods, Buyer shall pay Seller, in Seller's discretion, reasonable cancellation charges (in an amount not less than fifteen percent (15%) of the cancelled order). All orders for custom made units or the performance of any value-added service are non-cancelable, non-returnable and non-refundable. Buyer shall notify Seller in each instance when Buyer intends to return goods for repair. Seller shall be entitled to examine such goods at Buyer's facilities prior to their return. Final inspection and determination whether goods breach Seller's warranty shall be made by Seller. Returned merchandise must be accompanied by a RMA number printed clearly on the package. RMA number must be obtained by calling Seller's Customer Service Department. All returns are to be sent with shipping prepaid. Buyer shall return defective goods in their original package and in good condition, without alteration, defacement or removal of serial numbers or any part thereof. Upon acceptance of properly returned goods to Seller, Seller agrees to (a) repair the goods if such repair is less than one-half (1/2) of the replacement cost of the goods being returned; or (b) replace the defective goods with conforming goods. Such repair or replacement will be without charge to Buyer if the goods are under warranty. If the goods are not under warranty, Buyer will be charged for such repair or replacement. Merchandise cannot be returned for credit.

**9. BLANKET PURCHASE ORDERS.** (a) Buyer may place a Purchase Order for a large quantity of goods with releases or delivery dates scheduled over a period of time ("Blanket Purchase Order") but not later than one (1) year from the date of the Purchase Order ("completion date"). Blanket Purchase Orders accepted by Seller are non-cancelable, non-returnable ("NCNR"). Reschedule of delivery dates may only be changed upon written consent of Seller. Where Seller consents to a change in the release schedule, Buyer shall pay Seller, in Seller's discretion, all costs incurred by Seller in connection with such change, and Buyer agrees to pay the same. (b) During the term of any Blanket Purchase Order which exceeds 90 days, if the price of fuels, metals, components, raw materials or other production costs increases significantly, Seller shall have the right and Buyer shall have the obligation to renegotiate the price of all goods not yet shipped, and if an agreement is not reached, Seller shall have the right to terminate the Agreement without liability. (c) If Buyer fails to purchase the quantity upon which quantity prices are based by the completion date, Buyer will pay the non-discounted product price in effect at the completion date for the quantity actually purchased and shipped. This shall constitute a breach of the Agreement. As liquidated damages, Buyer will pay all costs incurred by Seller in connection with the goods not delivered to Buyer under the Blanket Purchase Order including, but not limited to, costs for all components and raw materials purchased by Seller to manufacture the goods and all work in process.

**10. DEFAULT/PURCHASE MONEY SECURITY INTEREST.** Seller retains a purchase money security interest in all goods sold by Seller to Buyer, and in proceeds of any resale of such goods, until the purchase price and any other charges due to Seller have been paid in full. Buyer agrees to execute any financing statements Seller may request in order to protect Seller's security interest and hereby authorizes Seller to execute and irrevocably appoints Seller its attorney in fact for the execution of such financing documents. Upon any breach by Buyer of these Terms and Conditions, Seller will have all rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies will be cumulative and not exclusive. Buyer is responsible for all costs and

expenses incurred by Seller in collecting any sums owing by Buyer (which may include, but are not limited to collection agency and reasonable attorneys' fees). If Seller incurs costs collecting on any judgment arising out of Buyer's breach, Buyer will be responsible for them, and this provision will survive the entry of any such judgment. Seller shall have the right to offset any sum owed by Seller to Buyer against any sum owed by Buyer to Seller. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or of any other remedy at any time.

**11. FORCE MAJEURE.** Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Seller, which causes shall include, without limitation, acts of God, acts or omission of Buyer, acts of civil or military authorities, fire, strikes, power surges or outages, epidemics, quarantine restrictions, flood, earthquakes, riot, war, delays in transportation or inability to obtain necessary labor, materials or supplies. In the event of any delay, the set date of delivery, if any, shall be extended for a reasonable period, or, at Seller's option, cancelled.

**12. INDEMNIFICATION (GOODS).** Buyer represents and warrants that the goods will not be resold, transferred, exported or reused in any way by Buyer in violation of any laws, regulations or export control imposed by the U.S. government. Buyer represents and warrants that the goods sold by Seller will not be used in connection with (a) nuclear installation or material or (b) safety applications or (c) medical devices or surgical implants or (d) any aircraft or aviation applications or (e) any applications where failure or malfunction could create a situation in which personal injury or death or catastrophic property damage is likely to occur. Buyer shall indemnify, defend and hold harmless Seller, including reasonable attorney fees, court costs and costs of investigation and defense, from any harm or damages or liability caused to it by any breach of the foregoing representations or for the failure to comply with any laws or regulations including, without limitation, any export laws of the U.S.

**13. PATENT INFRINGEMENT.** Except as excluded herein, Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any goods manufactured and supplied by Seller to Buyer constitutes direct infringement of any duly issued United States patent, provided (a) Buyer promptly notifies Seller in writing of any such claim and any such suit or proceeding, (b) Buyer gives Seller the sole right to defend, settle and control the defense of the suit or proceeding, at Seller's expense, (c) Buyer provides all necessary information and assistance for such defense or settlement, and (d) Buyer takes no position adverse to Seller in connection with such claim. In the event Seller is obligated to defend such suit or proceeding, Seller shall pay all damages and costs finally awarded or agreed upon by Seller that are directly related thereto. As used in this paragraph, the term "goods" shall mean only Seller's standard products, designed and manufactured by Seller, and expressly excludes products Seller purchases from third parties and merely resells.

If any goods manufactured and supplied by Seller to Buyer shall be held to infringe any United States patent and Buyer shall be enjoined from using the same, Seller may, but shall not be obligated to exert its reasonable efforts, at its option and at its expense, (i) to procure for Buyer the right to use such goods free of any liability for patent infringement or (ii) to replace such goods with a non-infringing substitute otherwise complying substantially with all requirements of this Agreement or (iii) refund the purchase price and the transportation costs of such goods. If the infringement by Buyer is alleged prior to completion of delivery of the goods under this Agreement, Seller may decline to make further shipments without being in breach of this Agreement, and provided Seller has not been enjoined from selling said goods to Buyer, Seller agrees to supply said goods to Buyer, at Buyer's option, whereupon the patent indemnity obligation herein stated with respect to Seller shall reciprocally apply with respect to Buyer.

If any suit or proceeding is brought against Seller based on a claim that the goods manufactured by Seller in compliance with Buyer's specifications and supplied to Buyer directly infringe any duly issued United States patent, then the patent indemnity obligations herein stated with respect to Seller shall reciprocally apply with respect to Buyer. The sale of the items ordered hereunder does not grant or convey or confer upon Buyer or Buyer's customers, or upon anyone claiming under Buyer, a license express or implied under any patent rights of Seller covering or relating to any combination, machine or process in which said items might be or are used.

Seller shall not be obligated to defend or for any other liability with respect to [a] any suit or proceeding to the extent based on or arising out of a configuration or modification made, specified or requested by Buyer and which is incorporated into or constitutes the goods, [b] the use of the goods in a process or application specified, requested or controlled by Buyer or any third parties, or [c] the use of the goods in combination with other equipment, software or materials not supplied by Seller. Seller's obligations hereunder shall not apply to any infringement occurring after Buyer has received notice of such suit or proceeding alleging the infringement unless Seller has given written permission for such continuing infringement.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR CLAIMS OF INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

**14. SELLER'S PROPRIETARY RIGHTS.** Seller's goods, processes, know-how or technology constitute Seller's trade secrets and proprietary information ("Seller's Proprietary Rights"). Seller shall solely own and shall have exclusive right, title and interest in and to all patents, trademarks, service marks, copyrights, trade secrets and all other intellectual and industrial property rights in any way related to Seller's Proprietary Rights, and to all modifications, improvements and derivative works related to any of the foregoing.

**15. TECHNICAL ASSISTANCE OR ADVICE.** Any technical assistance or advice offered by Seller in regard to the use of any goods or provided in connection with Buyer's purchases is given free of charge and only as an accommodation to Buyer. Seller shall have no obligation to provide any technical assistance or advice to Buyer and if any such assistance or advice is provided, such fact will not obligate Seller to provide any further or additional assistance or advice. Seller shall not be held liable for the content or Buyer's use of such technical assistance or advice nor shall any statement made by any of Seller's representatives in connection with the goods or services constitute a representation or warranty, expressed or implied.

**16. WORK AT SELLER'S PREMISES.** If Buyer's employees, contractors or agents perform work at Seller's premises, Buyer shall examine the premises to determine whether they are safe for such work and shall advise Seller promptly of any situation it deems to be unsafe. Buyer shall furnish evidence of compliance with the Worker's Compensation Act. Buyer shall handle and be responsible for every claim that arises from Buyer's work at Seller's premises that is for actual or alleged (i) injury to any person, (ii) damage to any property, (iii) economic loss, or (iv) violation of any law, ordinance or regulation, or at Seller's option, provide all reasonable assistance to Seller in Seller's handling of such claims, unless the claim arises from the negligence or recklessness of Seller or Seller's employees.

**17. INDEMNIFICATION (SERVICES).** If Buyer's employees, contractors or agents perform any work on Seller's premises or utilize the property of Seller, Buyer shall indemnify and hold Seller harmless from and against any liability, claims, demands or expenses, (including reasonable attorney fees) for damages to the property of or injuries (including death) to Seller, its employees or any other person arising from or in connection with Buyer's performance of work or use of Seller's property except for such liability, claim or demand arising out of the sole negligence of Seller.

**18. DISPUTES/GOVERNING LAW.** This Agreement and all disputes under any agreement concerning this order shall be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity, and construction. The parties submit to the jurisdiction of the Circuit Court for the County of Wayne, State of Michigan, or if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. No action, regardless of form arising out of, or in any way connected with the goods or services rendered by Seller, may be brought by Buyer more than one (1) year after the cause of the action has accrued. With respect to all disputes, the provisions of the United Nations Convention on Contracts for the International Sale of Goods 1980 (as amended, replaced or codified from time to time) shall not apply.

**19. INTEGRATION.** This Agreement, together with any affixed schedules and exhibits, constitutes the entire understanding between Buyer and Seller with respect to the subject matter of this Agreement and supersedes any prior discussions, negotiations, agreements and understandings. When Buyer and Seller enter into additional written agreements with respect to the sale of goods or services, these Terms and Conditions shall be deemed incorporated by reference in those additional writings.

**20. GOVERNMENT CONTRACTS.** Seller shall not be responsible for compliance with any Terms and Conditions intended to be imposed upon Seller by virtue of Buyer purchasing goods from Seller in support of a U.S. Government contract. Only those provisions required by the government contract and expressly agreed to by Seller in a separate written agreement between Buyer and Seller shall be binding upon Seller.

**21. GENERAL.** If any provision or portion of this Agreement is held to be invalid, illegal, unconscionable or unenforceable, the other provisions and portions hereof shall not be affected. The several captions used herein are for the convenience of the parties only and shall not affect the construction or interpretation hereof. Any clerical errors are subject to correction. In the event of a proper assignment, this Agreement shall be binding upon and inure to the benefit of Seller's and Buyer's successors and assigns.

**CAUTION/WARNING: DO NOT USE ANY OF SELLER'S GOODS IN ANY AIRCRAFT, AVIATION, NUCLEAR OR MEDICAL APPLICATION OR IN ANY APPLICATION TO PROTECT HUMAN LIFE OR AS A SAFETY DEVICE.**