



## Terms and Conditions of Sale

The following terms and conditions (these “**Terms and Conditions**”) are applicable to the sale of products or services (“**Products**”) by Flex Force Enterprises Inc., or one of its Affiliates, as identified in the Acknowledgement (“**FFEI**” or “**Seller**”) to any purchaser thereof (“**You**” or “**Buyer**”). Except as provided in Section 2, these Terms and Conditions together with the Seller’s quotation, Acknowledgement, terms incorporated into this Agreement by reference in these Terms and Conditions, and the price, quantity and delivery terms contained in Buyer’s purchase order constitutes the entire and exclusive agreement between Seller and Buyer (collectively, this “**Agreement**”). “**Affiliates**” means, with respect to either party, any other entity directly or indirectly controlling, controlled by, or under common control with such party. “**Acknowledgement**” means the sales order confirmation or order acknowledgment issued by FFEI to you which confirms the Products ordered, pricing and other relevant terms of the transaction.

**1. INTERNAL OR OTHER USE.** Buyer represents and warrants that it intends to use the Products for its internal use and is not purchasing the Products with the intent to resell or distribute the Products, unless authorized by Seller in the Acknowledgement or the Formal Agreement (as defined in Section 2).

**2. CONTROLLING TERMS.** If the parties have in effect a formal written agreement executed by duly authorized representatives of both parties related to the sale of Products by FFEI to you (a “**Formal Agreement**”), and there is a conflict among the terms of the Formal Agreement, these Terms and Conditions and this Agreement, the terms of the Formal Agreement will be first in order of precedence, and will prevail over these Terms and Conditions, and all of the foregoing will prevail over any other terms of this Agreement. Except as provided in the preceding sentence, this Agreement shall govern the sale of the Products to Buyer. If Buyer submits any other document that contains terms and conditions which are inconsistent with or in addition to this Agreement, then any such term or condition shall not alter this Agreement unless duly executed by an authorized executive of Seller. The sale of Products is expressly conditioned upon Buyer’s acceptance of this Agreement.

**3. PURCHASE PRICE, TAXES, PAYMENT AND CREDIT.** Except as otherwise stated in the Acknowledgement, prices are stated in United States of America (“**U.S.**”) dollars. The purchase price includes the costs of standard packaging of the Products; but excludes: (a) transportation, customs duties, insurance or any other costs or fees that may apply to the sale and delivery of the Products; and (b) any federal, state, municipal or other governmental tax applicable to the sale of the Products to Buyer, if any. All such taxes shall be in addition to the purchase price and be paid by Buyer unless otherwise agreed to or required by law. Buyer acknowledges and agrees that the full purchase price for the Products shall be due and payable fifteen (15) days after receipt of invoice unless FFEI requires payment by letter of credit, in advance of delivery or on other terms. All past due payments bear interest at the rate of two percent (2.0%) per month or the maximum amount allowed by law, whichever is less, on the unpaid balance. If Buyer fails to timely pay the purchase price for any Products, or fails to perform any other of Buyer’s obligations hereunder, Seller may, at its option, defer further shipments, revise its terms of payment, cancel the unshipped balance of the Agreement, and/or pursue any other remedy set forth in this Agreement or provided under law.

**4. DELIVERY.** Except as otherwise stated in the Acknowledgement, all Products are shipped Ex-Works (INCOTERMS 2010) Seller’s plant. Delivery shall occur, risk of loss shall pass and title (to the extent applicable) shall transfer to Buyer upon delivery of Products to the Ex-Works point (“**Delivery**”). All Delivery dates contained in the Acknowledgement are estimates and Seller has no liability for any delay in Delivery.

### **5. LIMITED WARRANTY, EXCLUSIONS AND DISCLAIMERS.**

**A. Limited Warranty.** Unless superseded by individual Product warranty terms set forth in the Specifications, a warranty section of FFEI’s website at [www.flexforce.us](http://www.flexforce.us), or in this Agreement, SELLER WARRANTS THAT FROM THE DATE OF DELIVERY AND FOR A PERIOD OF ONE YEAR, THE PRODUCTS WILL CONFORM IN ALL MATERIAL RESPECTS TO ITS SPECIFICATIONS AT THE TIME OF SALE AND BE FREE FROM MATERIAL DEFECTS UNDER PROPER USE AND SERVICE IN ACCORDANCE WITH THE SPECIFICATIONS. “**Specifications**” means the specifications delivered to Buyer with or in the Product and/or published on FFEI’s website for the applicable version of the Product. Buyer agrees that Specifications and other warranty information may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation. This limited warranty extends only to Buyer and is not transferable to any other party and any transfer made in violation of this provision shall be void. The warranty applies only to the unmodified portion of the Products. Buyer is responsible for the results obtained from the use of the Products. Buyer’s sole remedy, and Seller’s sole liability, for any breach of the foregoing warranty shall be to replace or repair any part or parts (or redeliver services) which were delivered in breach of the foregoing warranty.

**B. Warranty Exclusions and Disclaimers.** SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF BUYER HAS NOTIFIED SELLER OF ITS INTENDED USE FOR THE PRODUCTS) OR NON-INFRINGEMENT. SELLER FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OF THE PRODUCTS WHERE THE ALLEGED NONCONFORMITY IS DUE TO NORMAL WEAR AND TEAR, ALTERATION, MODIFICATION, REPAIR, ATTEMPTED REPAIR, IMPROPER USE OR STORAGE, IMPROPER MAINTENANCE, NEGLIGENCE, ABUSE, FAILURE TO FOLLOW ANY PRODUCT INSTRUCTIONS, DAMAGE (WHETHER CAUSED BY ACCIDENT OR OTHERWISE), VARIABLES OUTSIDE THE CONTROL OF FFEI, OR ANY OTHER IMPROPER CARE OR HANDLING OF THE PRODUCTS CAUSED BY ANYONE OTHER THAN SELLER. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO BUYER. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. BUYER MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. “**Variables**” include operator skills, non-FFEI equipment used with the Products, and environmental and climatic conditions.

**6. PRODUCT RETURNS.** Products shall not be returned to Seller without Seller’s written consent. Return instructions can be found at [www.flexforce.us](http://www.flexforce.us). Buyer will pay the cost of sending Products to FFEI in connection with warranty claims, and Seller shall pay the cost of returning to Buyer Products that are repaired or replaced under warranty.



**7. INTELLECTUAL PROPERTY.** Except for the right to use the purchased Products for their intended purpose and to resell the Products as described in Section 1, and except for the license rights described in Section 18(C), the sale of Products by Seller does not convey to Buyer or any other third party any license, implied or otherwise, under any Intellectual Property. Buyer acknowledges the ownership of and the validity of FFEI's trademarks, brand names, trade names, copyrights, patents, designs, trade secrets, inventions, and similar intellectual property, whether registered or not (collectively, "**Intellectual Property**"). Buyer will not reverse engineer, reverse compile, deconstruct, synthesize, or extract any element of and/or otherwise discover any source code, algorithms, circuits, structures, architectures, processes, methods or techniques embodied in, or otherwise translate, or reverse assemble the Products in whole or in part, except as expressly permitted by law without the possibility of contractual waiver and Buyer will not: (a) except as permitted in this Agreement, develop any products incorporating any of FFEI's Intellectual Property; nor (b) any improvements or applications related to the Intellectual Property. Buyer shall not apply for the registration of Intellectual Property in any country nor otherwise take any action inconsistent with FFEI's rights in the Intellectual Property. Buyer will not use in any way (including in Buyer's letterhead or presentation cards) FFEI's trade or business names or trademarks. Buyer acknowledges that FFEI shall own all updates or enhancements to Products, whether developed by Buyer or FFEI. Buyer shall not do, or cause to be done, any act that contests or in any way impairs any portion of FFEI's and its licensors, right, title and interest in and to the Intellectual Property Rights. Buyer shall not obscure or remove any proprietary rights notices of FFEI or its licensors contained in Products, including any trademarks, and copyright notices.

## **8. CONFIDENTIAL INFORMATION.**

**A. Definition.** "**Confidential Information**" of FFEI means any and all confidential information, including third party confidential information, disclosed by FFEI and/or any of its Affiliates ("**Disclosing Party**") to the Buyer ("**Recipient**") during the term of this Agreement, which, (i) if provided in tangible format, is labelled at the time of such disclosure as "confidential" or bearing a similar legend, (ii) if provided in oral or intangible format, is identified as confidential at the time of disclosure, or (iii) the Recipient should reasonably understand to be confidential based on the nature or circumstances of the disclosure, including Product pricing, non-public technical information and Products (and related information) identified as pre-release or not generally available. Except as otherwise provided in this Section 8, Recipient agrees that it will (a) hold in confidence and not disclose to any third party any Confidential Information of Disclosing Party, except in accordance with this Section 8; (b) protect such Confidential Information with at least the same degree of care that Recipient uses to protect its own Confidential Information of a similar nature, but in no case, less than reasonable care; and (c) notify Disclosing Party promptly upon discovery of any loss or unauthorized disclosure of Disclosing Party's Confidential Information.

**B. Restricted Information.** In addition to the foregoing, the U.S. International Traffic in Arms Regulations set forth at 22 C.F.R Parts 120-130 ("**ITAR**") and the U.S. Export Administration Regulations set forth at 15 C.F.R. Parts 730-774 ("**EAR**") may regulate disclosure of various types of technical information (regardless of whether it is considered Confidential Information) relating to design, development, manufacture, maintenance, repair, or use of FFEI's Products ("**Restricted Information**").

**9. COMPLIANCE WITH LAWS.** Buyer agrees to comply with all laws, regulations and executive orders of the U.S. and all other countries applicable to the sale, resale, delivery, or re-delivery of the Products and information hereunder, including ITAR, EAR, and embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users, and the U.S. Foreign Corrupt Practices Act and regulations, and all other applicable laws and regulations of other countries, related to anti-bribery and corruption (collectively, "**Laws**"). FFEI shall have no obligation to deliver any Products or Restricted Information to Buyer under this Agreement, except as permitted under Laws, and may cancel any related Delivery or order if it is unable to deliver in accordance with applicable Laws. Buyer shall comply with the Laws as well as all laws and regulations in Buyer's jurisdiction and any other jurisdiction related to the import, export, re-export, transfer, shipping, sale, resale and/or use of the Products and information. Buyer agrees that neither it, nor any of its employees will, directly or indirectly, pay or offer to pay money or give anything of value to any foreign official in order to influence any action or decision for the purpose of obtaining or retaining business or securing any competitive advantage. Buyer shall maintain all records evidencing its compliance with this Section 9 for the period required by the Laws and all other laws, and shall make such records available for inspection by FFEI upon request.

**10. CANCELLATION.** Seller reserves the right, in its sole discretion, to decline or to cancel any order for any reason, including if appropriate authorization is not obtained from any governments exercising export authority, or as otherwise provided in Section 9, and FFEI shall have no liability to Buyer in any way for any such cancellations. Buyer may cancel an order prior to Seller's Acknowledgement of the order, but cannot cancel an order following Seller's Acknowledgement unless express written consent to such cancellation is provided by Seller. Orders cancelled by Buyer may be subject to a restocking fee up to 25% and any applicable material, labor, service, or other costs and fees, at Seller's sole discretion.

## **11. LIMITATION OF LIABILITY.**

**A. Limitation of Liability.** Regardless of the basis on which Buyer is entitled to claim damages from FFEI (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), FFEI's entire liability for all claims in the aggregate arising from or related to each Product purchased by Buyer, or otherwise arising, under this Agreement will not exceed the amount of actual direct damages up to the total amounts paid by Buyer to FFEI for the Product that is the subject of the claim. This limit also applies to FFEI, all of FFEI's Affiliates and suppliers and is the maximum for which FFEI, its Affiliates and suppliers are collectively responsible. UNDER NO CIRCUMSTANCES SHALL FFEI, ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: DAMAGES CLAIMS BY ANY THIRD PARTY, WHETHER OR NOT THE CLAIMS ARE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE; LOSS OF, OR DAMAGE TO, DATA; SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

**B. Other Limits.** The limitations and exclusions in this Section 11 apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, Buyer shall not bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and, upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse. Buyer acknowledges and agrees that Seller



has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

**12. CONTACT INFORMATION.** Buyer authorizes FFEI and its Affiliates (and their successors and assigns, contractors and business partners) to store and use Buyer's contact information in connection with FFEI's sale, support and servicing of the Products, and for other lawful purposes.

**13. GOVERNING LAW.** This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the jurisdiction indicated below (the "**Jurisdiction**"), without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction, and the parties irrevocably submit to the jurisdiction of those courts. The parties agree that venue in any action arising under this Agreement shall be exclusively in state or federal courts located in the Jurisdiction indicated below. The rights and obligations of the parties to this Agreement will not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods, 1980. If Buyer's address in the Acknowledgement is in the Americas, the Jurisdiction is the State of Oregon in the U.S., if in the European Union, the Jurisdiction is Belgium and, for all other Buyers, the Jurisdiction is England.

**14. SEVERABILITY.** If any provision of this Agreement is, for any reason, held to be invalid, illegal or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**15. SALE OR ASSIGNMENT.** Buyer will not assign or transfer this Agreement without the prior written consent of FFEI and any attempted assignment or transfer in violation of the foregoing will be null and void. Notwithstanding the foregoing, Buyer may sell or transfer any Product to any third party (a "Transferee") as contemplated in the Acknowledgement, provided such transfer or assignment otherwise complies with the requirements of this Agreement, including the requirements of Sections 8 and 9, and the Transferee agrees to be bound by the restrictions contained in this Agreement. The Transferee shall not have any rights under this Agreement and shall not be a third party beneficiary for any purpose.

**16. ENTIRE AGREEMENT.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by the Seller. In case of any conflict between translations, the English language version of this document shall control.

**17. U.S. GOVERNMENT ACQUISITION REGULATIONS.** When Buyer is a prime contractor or a subcontractor at a higher tier than FFEI for a U.S. Government prime contract, applicable Federal Acquisition Regulations and Defense Federal Acquisition Regulation Supplement clauses (collectively, FAR Clauses) may be incorporated into this Contract only if there are other FAR clauses that make the subject incorporation in this Contract mandatory. FFEI expressly rejects the incorporation of any FAR Clauses that do not meet the foregoing condition. In all incorporated FAR Clauses, the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under this Contract and effect the proper intent of the clause. Except with respect to termination for FFEI's default, Buyer shall exercise an incorporated FAR Clause against FFEI only if, and to the extent that, the subject FAR Clause is exercised against the Buyer by Buyer's customer.

#### **18. PRODUCT SPECIFIC SUPPLEMENTAL PROVISIONS.**

**A. Reciprocal Waiver of Claims.** Wherein the product has been deployed in defense against, response to, or recovery from an act of terrorism as that latter term is defined under the SAFETY Act, Seller and Buyer of the product agree to waive all claims against each other, including their officers, directors, agents or other representatives, arising out of the manufacture, sale, use or operation of the product, and further agree that each is responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity arising out of such act of terrorism.

**B. Software.** If the Products include software from Seller ("**Software**"), Seller grants Buyer a nonexclusive, perpetual license to use the Supporting Software only on and in conjunction with the Principal Product, and all Software as otherwise provided in this Agreement and any license agreement embedded in or delivered with the Software. Buyer agrees that title to the Software remains with Seller (and its suppliers, if any). Buyer will not use, copy, modify, or distribute the Software except as expressly permitted in this Agreement; use any of the Software components, files, modules, audio-visual content, or related licensed materials separately from the Software; or sublicense, rent, or lease the Software. In addition, Buyer will use the Supporting Software only in conjunction with the related Principal Product. For purposes of this section, "**Supporting Software**" is Software that is part of another FFEI Product ("**Principal Product**"). This license applies to each copy of the Software that Buyer makes. Buyer may copy the Software for archival or back-up purposes in connection with the use of the Products. Buyer may transfer the license for Supporting Software if transferring the related Principal Product pursuant to the terms of Section 1.

**D. Cloud Services.** If the Products include cloud-based services, the terms of use applicable to such services which are published on FFEI's website at [www.flexforce.us](http://www.flexforce.us) are incorporated into this Agreement by reference.

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