



SALES TERMS AND CONDITIONS

These Terms and Conditions of Sale and Service ("Terms") govern the sale of Products and Support and the licenses of Software by Luna Technologies ("Luna"), a division of Luna Innovations Incorporated.

1. Definitions.

- a. "Product(s)" shall mean any hardware sold under these Terms and listed on the Sales Quotation attached hereto and made a part hereof. "Custom Products" means Products manufactured or configured to meet Customer requirements.
- b. "User Documentation" shall mean the documentation provided by Luna to Customer, in printed or electronic form, relating to the use of the Product.
- c. "Installation Services" shall mean the installation, set-up, test and related services for the Product, as defined in Luna's current published specifications therefor and described in the Sales Quotation.
- d. "Sales Quotation" means that certain sales quotation accepted by Customer for the Product on or prior to the date thereof.
- e. "Software" means one or more computer programs in object code format, whether stand-alone or bundled with other Products, and related user documentation provided to Customer under these Terms.
- f. "Specifications" means specific technical information about Products that is published by Luna in effect on the date Luna ships Customer's order.
- g. "Support" means any standard service such as hardware maintenance, calibration and repair; Software updates and maintenance; or education and training. "Custom Support" means Support adapted to meet Customer requirements.

2. Shipment and Packaging.

- a. Luna shall select the method of shipment of the Product. The cost of such shipment shall be Luna's then current area destination charge, and the cost of such shipment shall be added to the purchase price set forth in the Sales Quotation. If Customer shall desire a different mode of shipment, Customer shall advise Luna thereof, and Customer shall pay Luna any incremental costs associated with such different mode of shipment.
- b. The Product shall be packaged in accordance with Luna's then current packaging specifications for the Product for the method of shipment selected by Luna, and the cost of such packaging shall be included in the purchase price of Sales Quotation. If Customer desires or requires (including to accommodate a different mode of shipment) different or special packaging, Customer shall advise Luna thereof, shall assume all liability therefor, and shall pay Luna any incremental costs associated with such different or special packaging.
- c. Luna reserves the right to ship items in a single or in multiple shipments, and Customer will accept and pay for partial shipments of Products.
- d. The Product shall be delivered FCA (Incoterms 2000) 2725 S. Industrial Highway, Suite 100, Ann Arbor, MI 48104; 3155 State Street, Blacksburg, Virginia 24060; 14351 Pipeline Avenue, Chino, CA, 91710; or 1852 Century Place NE Atlanta, GA 30345 and thereafter, title to and risk of loss to the Products (except for any Software therein) shall pass to Customer therefor.

3. Purchase Price, Taxes and Payment Terms.

- a. Payment terms are subject to Luna credit approval. Luna may change credit or payment terms at any time should Customer's financial condition or previous payment record so warrant.
- b. The purchase price for the Product shall be as set forth in the Sales Quotation. The purchase price, together with all applicable shipping charges, packaging charges, insurance, other special charges and taxes, including any and all penalties, but less any credits or deposits, shall be payable to Luna within 30 days of the invoice date in accordance with the payment method set forth in the Sales Quotation. Customer shall pay a late payment charge of 1.5 percent per month, or the maximum rate permitted by applicable law, whichever is less, on any unpaid amount for each calendar month or fraction thereof that any payments are in arrears to Luna. In the event Customer defaults in its obligations hereunder, Customer shall be liable for Luna's costs of collection, including reasonable attorney's fees.
- c. Customer shall pay all taxes based on or in any way measured by these Terms, the Product, or any Support services related thereto, including any personal property taxes, but excluding taxes based on Luna's net income. If Customer elects to challenge the applicability of any such taxes, Customer shall pay such taxes to Luna and Customer may thereafter challenge such taxes and seek refund thereof.

4. Installation Services and Acceptance.

- a. Customer shall have the exclusive responsibility for preparing and maintaining the site for the Product, including, but not limited to, providing power and environmental requirements (as specified by Luna), wiring, and communications lines, and for obtaining and maintaining the necessary permits and certifications therefor. Customer's failure to prepare and maintain the site and to obtain the necessary permits and certifications shall relieve Luna of the obligation of performing Installation Services.
- b. If Customer elects to have Luna perform Installation Services and Luna has received payment therefor, acceptance by Customer occurs upon completion of the Installation Services. Luna shall perform the Installation Services at the facility designated by Customer as soon as commercially reasonably practicable after delivery of the Product to Customer's facilities. If Luna is precluded from performing Installation Services by applicable law or union contract, Customer may require that Luna supervise others in the performance of such Installation Services and Customer shall bear all costs for the performance thereof.
- c. If Customer schedules or delays installation by Luna more than thirty (30) days after Delivery, Customer acceptance of the Product will occur on the thirty-first (31st) day after delivery. For Products without Installation Services included, acceptance by Customer occurs upon delivery.

5. Warranty; Restrictions on Use.

- a. Luna warrants that, under normal use and service, the Product will meet Luna's published Specifications therefor for a period of one year after delivery thereof to Customer and performance of the Installation Services.
- b. Luna does not warrant that the operation of Products will be uninterrupted or error free.
- c. If the Product fails to meet the warranties of Paragraph 5(a) and Customer gives Luna written notice thereof during the applicable warranty period, Luna's sole obligation shall be at its option to correct the failure by repair or replacement. In order to make a warranty claim, Customer shall
 1. promptly notify Luna of any defect in the Products delivered;
 2. seek and obtain a return merchandise authorization form from Luna; and
- d. Luna warrants that Luna Support will be provided in a professional and workmanlike manner. For ninety (90) days from the date of repair, Luna will replace, at no charge, defective parts used in Luna's repair of Products.



- e. The Product may be new or equivalent to new in performance. Luna reserves the right in its sole discretion to include in the repaired or replaced Product Software that is upgraded, modified, or different from the Software originally included with the Product.
- f. Customer's Product warranty is transferable upon Luna's receipt of written notification. Such notification must include the serial number, model number and the name, address and location of transferee and the transferee must agree in writing to Luna's warranty terms.
- g. EXCEPT AS AND TO THE EXTENT EXPRESSLY PROVIDED IN THIS PARAGRAPH 5 AND IN LIEU OF ALL OTHER WARRANTIES, THE PRODUCTS, SOFTWARE, AND ANY OTHER MATERIALS, DATA AND/OR SUPPORT PROVIDED BY LUNA ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND LUNA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, NONINFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, SUITABILITY, TITLE, OR FITNESS FOR PARTICULAR PURPOSE, OR THAT THE OPERATION OF PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.
- h. Luna shall not be liable to Customer for the warranty provisions of this Paragraph 5, if:
 - 1. Modifications are made to the Product or Software by someone other than Luna and not authorized by Luna;
 - 2. The Product or Software is subject to misuse or abuse; or
 - 3. Customer failed to use the Products or Software in accordance with industry standards and practices, failed to use the Products in accordance with the User Documentation, or failed to properly maintain the Products.
- i. No employee, agent, or representative of Luna has the authority to bind Luna to any oral representation or warranty concerning the Product.
- j. Customer shall use the Product only for the purposes described in the Sales Quotation and Customer shall not attempt, or engage any party to attempt, to reverse engineer, alter, deconstruct or in any way determine the structure or composition of the Product.
- k. Except as expressly agreed in writing by the parties, Customer may not resell the Product (including the Software) to any third party.

6. Proprietary Rights Indemnity.

- a. Luna shall defend or settle, at its own expense, any cause of action or proceeding brought against Customer that is based on a claim that the Product (including the Software) infringes any issued United States patent. Luna shall indemnify and hold Customer harmless against any final judgment, including an award of attorney's fees, that may be awarded by a court of competent jurisdiction against Customer as a result of the foregoing; provided that Customer gives Luna prompt written notice of such cause of action or proceeding and provides Luna with all reasonable cooperation and information in Customer's possession.
- b. In the event of a claim that the Product infringes any issued United States patent or if Luna reasonably believes that a likelihood of such a claim exists, Luna may, in Luna's sole discretion, procure for Customer the right to continue using the Product, modify the Product to make it non-infringing, or replace the Product with noninfringing computer hardware of similar capability; provided, however, if none of the foregoing is commercially reasonably available to Luna, it may remove the Product from Customer's premises and refund to Customer the purchase price less a reasonable rental for past use thereof.
- c. Luna shall not be liable to Customer for infringement pursuant to this Paragraph 6 if such claim is based solely on:
 - 1. Combination of the Product or Software by someone other than Luna; or
 - 2. Modifications made to the Product or Software by someone other than Luna; or
 - 3. Modifications made to the Product or Software by Luna to meet Purchasers' requirements.
- d. The foregoing constitutes Luna's entire liability to Customer for the infringement of proprietary rights by the Product or any portion thereof and Customer's sole and exclusive remedy for any infringement of any proprietary rights.

7. Customer Indemnity. Customer agrees to indemnify, defend and hold harmless Luna from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from (i) the combination, operation, or use of the Product (including the Software) with products, services, information, materials, technologies, business methods or processes not furnished by Luna; (ii) modifications to the Product (including the Software), which modifications are not made by Luna; (iii) failure to use updates to the Software provided by Luna; or (iv) use of the Product (including the Software), except in accordance with any applicable user documentation or specifications, in each case, by any user, including the Customer. Customer shall not settle any claim unless such settlement completely and forever releases Luna from all liability with respect to such claim or unless Luna provides its prior written consent to such settlement, and further provided that Luna shall have the right, at its option, to defend itself against any such claim or to participate in the defense by counsel of its own choice.

8. Termination/Cancellation.

- a. These Terms may be terminated or cancelled by Luna, if:
 - 1. Customer fails to pay Luna the purchase price;
 - 2. Customer is in default of any other provision of these Terms and such default has not been cured within thirty (30) days after written notice thereof is given by Luna; or
 - 3. Customer becomes insolvent or seeks protections, voluntarily or involuntarily, under any bankruptcy laws.
- b. In the event of any termination/cancellation of these Terms, Luna may:
 - 1. Declare all amounts owed to Luna to be immediately due and payable;
 - 2. Enter Customer's premises and repossess the Product and all other items supplied by Luna; and
 - 3. Cease performance of all its obligations hereunder without liability to Customer.
- c. The foregoing rights and remedies of Luna shall be cumulative and in addition to all other rights and remedies available to Luna in law and in equity.
- d. Prior to the date of shipment, Customer may cancel its order, subject to a cancellation fee.
- e. The provisions of Paragraphs 1, 3, 5, 6, 7, 9, 10(a), 12(c), 13 and 14 will survive such termination or cancellation of these Terms.

9. Limitation of Liability. IN NO EVENT SHALL LUNA, ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE TO CUSTOMER FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING DOWNTIME COSTS, LOSS OF DATA, RESTORATION COSTS, LOST PROFITS, REVENUE, GOODWILL OR DATA, OR COST OF COVER) ARISING OUT OF OR RELATED TO THESE TERMS OR THE PERFORMANCE OR BREACH THEREOF OR USE OF THE PRODUCTS, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, WHETHER TORT, CONTRACT, OR STRICT LIABILITY, EVEN IF LUNA HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. THIS EXCLUSION IS INDEPENDENT OF ANY REMEDY SET FORTH IN THESE TERMS. LUNA'S LIABILITY FOR ANY DAMAGES ASSERTED BY CUSTOMER SHALL IN NO EVENT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE PRODUCTS.

10. Software.



- a. Except as the parties expressly agree otherwise, Luna hereby grants to Customer a perpetual, nonexclusive, non-transferable license to use the Software solely in accordance with the documentation provided with the Licensed Software and solely as necessary to use the Products.
- b. Customer may not, and no right is granted to Customer to copy, modify, or disassemble, or permit others to copy, modify, or disassemble, the Software, nor may Customer modify, adapt, translate, reverse engineer, decompile, or otherwise attempt to derive source code from the Software. Customer shall not transfer possession of the Software except as part of, or with, the Products, such transfer being subject to the restrictions contained herein. Customer may not sublicense, assign or otherwise transfer the Software, except upon Luna's prior written consent.
- c. Customer acknowledges and agrees that, except as specifically set forth in this Agreement, it does not acquire under this Agreement any rights of use or ownership with respect to any trade names, trade dress, trademarks, service marks, commercial symbols, copyrightable material, designs, logos and/or any other intellectual property of Luna. Customer further acknowledges that the Software, although copyrighted, is unpublished and contains proprietary and valuable information of Luna and is considered to be a trade secret of Luna.
- d. Luna retains all right, title and interest in and to the Software and Customer acknowledges that it neither owns or acquires any rights in or to the Software not expressly granted by this Agreement. Customer further acknowledges that Luna retains the right to use the Software for any purpose in Luna's sole discretion. Customer will promptly notify Luna in the event Customer suspects or becomes aware of any misuse of the Software or any violation, infringement or misappropriation of Luna's proprietary rights therein by any Customer or other third party.

11. Sole Remedy. The remedies in these Terms are Customer's sole and exclusive remedies.

12. Title and Security Interest.

- a. Luna hereby sells to Customer the Product(s) identified in the Sales Quotation for the price stated therein. Title to the Product (except for any Software therein) shall vest in the Customer upon shipment thereof by the Luna; provided, however, Customer hereby grants Luna a first priority security interest in all Products purchased or to be purchased hereunder to the maximum extent permitted by law.
- b. Customer hereby authorizes Luna, where permitted by applicable law, to file a financing statement without the signature of Customer. At Luna's request, Customer shall execute such other documents as Luna may request to perfect or enforce Luna's security interest in the Product. Customer shall not remove the Product from the location specified herein without Luna's prior written consent, so long as it retains a security interest in the Product.
- c. Title in and to the Software and the User Documentation shall remain solely in Luna, and, subject to the payment of the purchase price set forth in the Sales Quotation, Customer shall have a non-exclusive license to use the User Documentation in connection with the Product. Customer shall not copy or disclose to anyone outside of Customer the User Documentation, without Luna's prior written consent.

13. Trademarks; Use of Name. Luna and Customer recognize that Luna shall be the sole and exclusive owner of all trade names, trademarks and copyrighted materials relating to the Products and its business. Customer shall be prohibited from any use of Luna trade names, trademarks and copyrighted materials without the prior written consent by Luna. Customer shall not use the name of Luna without Luna's prior written consent, which will not be unreasonably withheld. Customer agrees not to register or use any name or mark confusingly similar to the Luna trademarks.

14. General.

- a. These Terms shall be effective upon acceptance of the Sales Quotation by Customer or acceptance of a purchase order by an authorized representative of Luna.
- b. Luna will not be liable for performance delay or for non-performance due to causes beyond its reasonable control.
- c. If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.
- d. Any and all documentation and information made available or disclosed by Luna to Customer shall be treated by Customer on a confidential and restricted basis. Except as expressly set out in these Terms, none of the foregoing shall be reproduced, disclosed to any third party or used for any purpose with the prior written consent of Luna, and shall be promptly returned to Luna upon its request, or upon any expiration, termination or cancellation of these Terms, whichever occurs first.
- e. Customer who exports, re-exports, transfers or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable U.S. and other laws and regulations, and for obtaining required export and import authorizations. Customer will comply with U.S. and other laws and regulations prohibiting transfers, exports and re-exports to certain end-users and destinations or for certain end uses, unless written authorization is obtained from the appropriate government. Luna may suspend performance if Customer is in violation of applicable laws or regulations.
- f. Neither party's failure to exercise any of its rights under these Terms will be deemed a waiver or forfeiture of those rights.
- g. To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.
- h. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.
- i. Any cause of action arising out of or related to these Terms must be brought no later than one year after the cause of action has accrued.
- j. Except as the parties expressly agree otherwise, these Terms constitute the entire agreement between the parties relating to the subject matter hereof and supersede all prior understandings, writings, proposals, representations or communications, oral or written, of either party. These Terms may only be amended by an instrument executed by the authorized representatives of both parties.
- k. These Terms shall be interpreted in accordance with the substantive laws of the Commonwealth of Virginia.
- l. Customer shall not, in whole or in part, transfer or assign this Agreement or any right granted hereunder, except upon written consent of Luna, and absent such consent, any attempted transfer or assignment by Customer shall be null and void. Luna may assign its rights or delegate its obligations hereunder without Customer's prior consent. To the extent not prohibited hereby, this Agreement shall be binding upon and inure to the benefit of Luna and Customer and Luna's and Customers' successors and permitted assigns.