

Trioptics, Inc., Standard Terms and Conditions for Sale of Preventative Maintenance and Service Contracts

Definitions

In these Terms and Conditions, the following words shall have the following meanings:

- “Buyer” means the purchaser of Deliverables;
- “Confidential Information” means all information, materials, or concepts confidential or proprietary to Seller relating to its business or customers which includes, but is not limited to, the following types of information and other information of a similar nature (whether in writing, orally, visually, electronically or by any other means): trade secrets; inventions; discoveries; ideas; concepts; methods; techniques; “know-how”; processes; procedures; designs; devices; drawings; materials; specifications; algorithms; software programs; software source documents; models; studies; data; documentation; diagrams; research; improvements; development plans; products; customers and customer lists; pricing; sales and marketing plans; business forecasts; and financial information, as well as all copies, summaries, analyses, compilations, forecasts, studies or other documents prepared by any other party in connection with the Deliverables which contain or reflect any such Confidential Information. Confidential Information of Seller shall also include: (i) Seller Technology; (ii) Developed Technology; and (iii) details of “know-how” (technological and otherwise) gathered during conversations, meetings, consultations, and during the investigations, development, establishment, and marketing however arising in connection with the Deliverables.
- “Deliverables” means the Products and/or Services described in a Purchase Order;
- “Developed Technology” means any Technology created or discovered by either the Seller or the Buyer in connection with the performance of the Services or the delivery of the Products pursuant to the Purchase Order.
- “Effective Date” means the first date that the Seller and the Buyer commence communications regarding any Deliverables or contemplation of any Deliverables;
- “Products” means the products (including, without limitation, software, hardware, firmware) described in a Purchase Order to be delivered by the Seller to the Buyer pursuant to the Purchase Order;
- “Purchase Order” means a purchase order or other similar document issued for the delivery by the Seller of Deliverables to the Buyer, including all other documents, agreements, contracts, and the like issued in connection therewith;
- “Intellectual Property Rights” means all (whether current or future) rights in copyrights, trade secrets, trademarks, mask works, patents, and other intellectual property rights, including, in each case whether unregistered, registered or comprising an application for registration, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing that may exist anywhere in the world;

- “Seller” means, jointly and severally, Trioptics, Inc. and Trioptics GmbH, a company formed under the laws of the Federal Republic of Germany, and their respective affiliates;
- “Seller Technology” means (A) Developed IP; and/or (B) Technology: (i) that is identified by Seller as “Seller Technology” in the Purchase Order or otherwise; (ii) that Seller owned, created, or discovered prior to the Effective Date; or (iii) that is, or is incorporated in, or is related to, the design, function, structure, development and/or manufacture of software, firmware, hardware, products, and or services of Seller, including, without limitation, all results, drawings, bill of materials, reports, findings, conclusions, work papers, notebooks, electronic records, samples, prototypes, deliverables, and any other information or materials in any form or format arising out of, or the performance of, the Purchase Order;
- “Services” means any customizations, training, installation, and any other mutually agreed upon services as described in a Purchase Order;
- “Technology” means anything (including, without limitation, ideas, creations, works, processes, designs, and methods) that is patentable, copyrightable, registrable as a mask work, protectable as a trade secret, or otherwise protectable as an Intellectual Property Right (and all copyrightable works that are created pursuant to performance under a Purchase Order shall be considered “works made for hire” as defined by U.S. Copyright Law; and
- “Terms and Conditions” means these Trioptics, Inc., Standard Terms and Conditions for Sale of Deliverables.

General

These Terms and Conditions shall govern the sales of Deliverables by the Seller to the Buyer as of the Effective Date with respect thereto (sometimes referred to as the “Transaction”) to the exclusion of any quote, order, invoice, confirmation, other documentation, and/or terms and conditions referred to, offered or relied on, or issued by the Buyer in connection with the Transaction, and the same shall be of no force or effect and non-binding on the Seller and/or the Transaction. It is expressly acknowledged and agreed by the Buyer that these Terms and Conditions shall supersede any terms and conditions of the Buyer attached to any Purchase Order, and that the Seller’s performance under any such Purchase Order shall not constitute a waiver by the Seller of the applicability of these Terms and Conditions to such transaction or acceptance by the Seller of any such terms and conditions of the Buyer attached to any such Purchase Order.

Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed to by the Seller in a writing signed by the Seller.

Price and Payment

The price shall be the recommended retail price less agreed discount (“Net Price”), unless otherwise agreed in writing between and signed by the Seller and the Buyer. The Net Price is exclusive of VAT or any other applicable taxes, customs, tariffs, costs, and expenses (including packaging and shipping costs and

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expenses); and the "Gross Price" means the Net Price plus the amounts for VAT or any other applicable taxes, customs, tariffs, costs, and expenses (including packaging and shipping costs and expenses).

Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Seller. The offer of credit will be at the sole discretion of the Seller on each transaction without regard to the extension or not of credit on a previous transaction with the Buyer.

Where credit is offered, payment of the Gross Price shall be due within thirty (30) days of the date of the invoice supplied by the Seller, unless otherwise agreed in writing signed by the Seller. In cases where credit is not offered, full payment of the Gross Price will be required before release of Products or performance of Services by the Seller.

The Seller shall be entitled to the option to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of one and one-half percent (1.5%) per month or portion thereof.

If payment of the Gross Price or any part thereof is not made by the due date, then the Seller shall be entitled to:

1. require payment in advance of delivery in relation to any Products not previously delivered or any Services not previously performed; and/or
2. refuse to make delivery of any undelivered Products or perform any Services without incurring any liability whatsoever to the Buyer for non-delivery or any delay in delivery.

Description

Any description given or applied to the Products is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the Purchase Order.

Sample

Where a sample of the Products is shown to and inspected by the Buyer, the Buyer accepts that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

Delivery

Unless otherwise agreed in writing signed by the Seller, delivery of the Deliverables shall take place at the address specified by the Buyer on, or as close as possible to, the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery.

If the Seller is unable to deliver the Products because of actions or circumstances under the control of the Buyer, then the Seller shall be entitled to place the Products in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.

For international shipments, EXW (Ex Works) origin shipping terms will be the method the Seller chooses. The shipping terms are pre-defined 2010 Incoterms published by the International Chamber of Commerce (ICC) (to avoid any confusion, risk of loss and damage regarding Products shipped internationally shall pass to the Buyer upon delivery to the international shipper).

For domestic shipments, FedEx (Federal Express) FOB origin and/or UPS (United Parcel Service) FOB origin are methods the Seller chooses for domestic shipping (to avoid any confusion, risk of loss and damage regarding Products shipped domestically shall pass to the Buyer upon delivery to the domestic shipper).

Cancellation

During manufacture of the Products, should the Buyer decided to cancel the Purchase Order, the Seller has the sole right to invoice the Buyer for the amount totaling the cost for the current state of Products and man hours performed to complete the work up till the point of cancellation.

Limited Warranty

The Seller warrants for a period of one (1) year following delivery of the Products that the Products are free from defects in materials and workmanship under normal use.

The Seller warrants for a period of one (1) year following performance of the Services that such performance will be consistent with generally accepted industry standards for such Services.

The Seller warrants that for a period of one (1) year following the date of delivery or of installation, whichever is earlier, that the Products, when operated in accordance with the documentation and other instructions provided by the Seller, will perform substantially in accordance with the functional specifications set forth in the documentation.

Software

The Seller represents and warrants to the Buyer that it owns or controls rights in the software supplied as part of the Products sufficient to grant the rights granted to the Buyer without the need for any third party consents or approvals.

RISK

Risk of loss and damage regarding the Products shall pass to the Buyer: (i) at the time when described in the “Delivery” section above for international shipments and domestic shipments; (ii) at the time when the Products are personally delivered to any authorized representative of the Buyer by an authorized representative of the Seller; or (ii) at the time when the Products are entrusted to an authorized representative of the Buyer or are set aside for the Buyer, whichever is earlier, if the Buyer chooses to personally collect the Products itself from the Seller.

TITLE

Title in the Products shall not pass to the Buyer until the Seller has been paid the full and indefeasible Gross Price for the Products.

RETURN OF UNUSED PRODUCTS

All Products are sold on a firm sale basis (*i.e.*, the Seller will not take back any Products not required or sold by the Buyer unless otherwise agreed in a writing signed by the Seller), in which case the following terms apply:

- Any returns must be authorized in writing signed by an authorized representative of the Seller before any credit will be given. Buyer must request a Return Material Authorization (“RMA”) number either by email from service@trioptics-usa.com or by web form at <https://www.trioptics.com/contact-service/rma-form/>. All parcels need to be clearly labeled with the assigned RMA number when sending Products to the Seller.
- Where the Seller agrees to accept the return of Products that are not damaged, the Buyer will be responsible for the cost of carriage and will ensure that they are carefully packaged to avoid any damage in transit. The Seller will not accept any Products that are damaged in any way, and any such damage shall void any agreement to provide a credit.
- Credit of amounts due or paid in will be the Net Price only and otherwise will only be given for Products that are in saleable condition.
- The Buyer will be invoiced for a flat rate of twenty percent (20%) of the greater of either Price or the current Price for the Products as a restocking fee. This does not include Services (trainings, installations, *etc.*)

LIMITATION OF LIABILITY

The Seller shall not be liable for any all loss or damage suffered by the Buyer in excess of the Net Price for the Products from which such loss and damage arises.

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Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's gross negligence.

NOTWITHSTANDING ANY PROVISION IN THESE TERMS AND CONDITIONS OR IN ANY PURCHASE ORDER OR IN ANY OTHER DOCUMENT BETWEEN BUYER AND SELLER, SELLER SHALL NOT HAVE ANY LIABILITY (WHETHER UNDER CONTRACT, TORT, OR OTHERWISE, INCLUDING FOR NEGLIGENCE) ARISING OUT OF OR RELATING TO ANY OF THESE TERMS AND CONDITIONS, ANY PURCHASE ORDER, AND ANY OTHER DOCUMENT BETWEEN THE BUYER AND THE SELLER THIS AGREEMENT FOR: (I) THE OTHER PARTY'S LOST DATA, REVENUES, AND PROFITS; (II) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE ANY OF THE FOREGOING); OR (III) EXEMPLARY OR PUNITIVE DAMAGES.

INTELLECTUAL PROPERTY RIGHTS

All title and interest in and to, and immediate possession or repossession of, any and all Seller Technology shall remain as the sole and separate property of the Seller. For avoidance of doubt, nothing in these Terms and Conditions shall be deemed to, and the Seller does not, assign any ownership of or grant any license to any of Seller Technology to the Buyer, its affiliates, distributors, customers, and other end users, if any, regardless of whether any such Seller Technology is incorporated in, or is necessary to use, the Services or the Products.

CONFIDENTIALITY

At all times, the Buyer will maintain the confidentiality of all Confidential Information with the highest degree of care (and, under no circumstance, less than the degree of care the Buyer provides (or requires) with respect to its utmost confidential information) and may only use Confidential Information to fulfill its obligations hereunder and under a Purchase Order. The Buyer will protect all Confidential Information from unauthorized use, disclosure, copying, dissemination or distribution. The Buyer will not disclose, deliver, distribute, display, demonstrate or otherwise make available Confidential Information to any employees, consultants or third parties (collectively, "Permitted Disclosees") without the Seller's prior written and signed consent in each such case. The Buyer will (a) inform each Permitted Disclosee of the requirements of this "Confidentiality" section of these Terms and Conditions; (b) ensure that each Permitted Disclosee complies with each of the Buyer's obligations, as set forth in these Terms and Conditions; (c) be responsible for any breach of these Terms and Conditions by its Permitted Disclosees; and (d) take all reasonable measures (including but not limited to initiating court proceedings) to enforce the terms of these Terms and Conditions with respect to such Permitted Disclosees. The Buyer will not copy or reproduce any Confidential Information except to the extent reasonably required for the performance. The Buyer will not reverse engineer, decompile or disassemble any computer program included in Confidential Information (except as permitted by law) and will not remove or obliterate markings (if any) on Confidential Information indicating its proprietary or confidential nature.

The Buyer acknowledges that each obligation in this “Confidentiality” section is necessary and reasonable in order to protect the Confidential Information, and that monetary damages would be inadequate to compensate the Seller for any breach of this “Confidentiality” section. Accordingly, the Buyer acknowledges and agrees as follows: (a) any such violation or threatened violation will cause irreparable injury to the Seller; and (b) in addition to any other remedies that may be available to the Seller at law, in equity or otherwise, the Seller will be entitled to obtain injunctive relief against any threatened breach of this “Confidentiality” section or the continuation of any such breach, without the necessity of proving actual damages or posting a bond (or other security).

COMPLIANCE WITH LAWS

The Buyer and its agents and affiliates must, and must cause their respective employees to, comply at their own expense with all applicable local, national, regional and international laws, ordinances, regulations, codes, standards, directives and international conventions, rules and agreements, including, without limitation, export and import laws, to the extent that any of the foregoing have the force of law by being directly enforceable by a governmental authority, a court or other proper tribunal.

INDEMNIFICATION

The Buyer, at its sole expense, will defend the Seller, and its directors, officers, employees, customers, contractors, affiliates and agents (collectively, “Indemnitees”) harmless from and against any and all actual or threatened suits, actions, proceedings (at law or in equity), and claims (groundless or otherwise) (“Claims”), and indemnify the Indemnitees for any and all damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, taxes, costs and expenses (including, but not limited to, reasonable attorneys’ fees, expert witnesses’ costs and fees, costs, penalties, interest and disbursements) arising from or relating to any Claim (including third-party claims) against any Indemnitees, whether successful or not, caused by, arising out of or resulting from (a) any breach or alleged breach of any of the Buyer’s representations or warranties or obligations; (b) any negligent act or willful misconduct by the Buyer or any party acting on its behalf; (c) any claims by any employee or contractor of the Buyer (including, but not limited to, employment, workers’ compensation or recovery for on-the-job injury claims); (d) any bodily injury (including death) or damage to any property caused by any negligent or willful act or omission by the Buyer (or any party acting on the Buyer’s behalf); or (e) any failure to comply with any applicable laws.

FORCE MAJEURE

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including, but not limited to, acts of God(s), strikes, lock outs, accidents, war, fire, governmental or judicial action now or hereafter relating to an endemic, pandemic (including COVID-19), or other similar event, breakdown of plant or machinery or shortage, or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled

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to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the Purchase Order.

RELATIONSHIP OF PARTIES

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other. Neither party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.

ASSIGNMENT AND SUB-CONTRACTING

The Purchase Order between the Buyer and Seller for the sale of Products shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent signed by the Seller.

ENTIRE AGREEMENT

These Terms and Conditions is the entire agreement of the parties regarding the subject matter hereof, superseding all other agreements between them, whether oral or written, regarding the subject matter hereof. In the event of a conflict between these Terms and Conditions and the Purchase Order or any other document (regardless of whether or not signed), these Terms and Conditions shall govern; unless the Purchase Order or other document expressly refers to those provisions in these Terms and Conditions that do not apply.

WAIVER

The failure by either party to enforce at any time or for any period any one or more of these Terms and Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all these Terms and Conditions.

SEVERABILITY

If any term or provision of these Terms and Conditions is held invalid, illegal, or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal, or unenforceable provision eliminated.

GOVERNING LAW AND JURISDICTION AND VENUE

It is the intention of the parties that the laws of the State of California shall govern the validity of these Terms and Conditions and any relationship arising herefrom or from any Purchase Order, the construction of its terms, and the interpretation of the rights and duties of the parties, without regard to conflicts of law principles. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, these Terms and Conditions and any relationship arising herefrom or from any Purchase Order may be brought against any of the Parties in the courts of the State of California, County of San Bernardino, or, if it has or can acquire jurisdiction, in the United States District Court for the Central District of California, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

MODIFICATIONS AND UPDATES

The Buyer understands and expressly agrees that (i) the Seller reserves the right to modify and/or update these Terms and Conditions from time to time and at any time, and (ii) all Terms and Conditions provided to the Buyer prior to any such modification or update shall automatically incorporate any such modification and/or update regardless of whether or not notice of such modification or updates are provided; it being further understood by the Buyer that the Buyer shall be responsible for ensuring it has the most recent updated version of these Terms and Conditions.