

ACCULOGIC STANDARD TERMS AND CONDITIONS

Terms and Conditions: These standard terms and conditions shall govern all orders and acceptances ("**order(s)**") of products (including software and firmware) ("**Products**") sold from time to time by Acculogic Inc. ("**Acculogic**") to its customers ("**Buyer(s)**"), shall supercede any inconsistent terms contained in any order received by Acculogic and cancels, replaces, and supersedes all prior or contemporaneous oral or written correspondence, negotiations, understandings and agreement between the parties with respect thereto.

1) Prices, Payment and Delivery Terms:

Acculogic written quotations become void unless accepted by the Buyer within 30 days of their date. PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE. All Products are sold on a cash-on-delivery basis or on such arrangements as to credit as Acculogic may, in its sole discretion, grant to the Buyer from time to time through its credit department. Invoices shall be rendered upon shipment and are due within 30 days of receipt. Amounts past due are subject to a service charge of 1.5% per month or portion thereof. All quoted prices and payments shall be in U.S. Dollars, F.O.B. (Acculogic's premises). The carrier, method of shipment, and routing of shipment shall be selected by Acculogic in its absolute discretion, unless the Buyer and Acculogic agree in writing to specific delivery arrangements prior to shipment being made. All transportation charges or costs of insurance which may be assessed in connection with all Products delivered hereunder shall be added to the price quoted to the Buyer and shall be paid by the Buyer.

2) Risk of Loss: Buyer assumes all risks of loss or damage upon delivery to the carrier at the point of shipment.

3) Taxes: The price quoted is exclusive of all applicable sales, use, or other excise taxes (including provincial sales tax and goods and services tax) and all other taxes, duties, tariffs, levies, imposts, or fees applicable to or arising from the transaction, and the Buyer

shall pay promptly all such taxes, duties, tariffs, levies, imposts, or fees in the manner required by law. Where the Buyer claims to be entitled to an exemption from the obligation to pay any taxes, duties, tariffs, levies, imposts, or fees, the Buyer shall furnish satisfactory proof of its exemption to Acculogic, failing which Acculogic may charge and the Buyer shall pay the amount in question and shall seek repayment from the appropriate taxing or other governmental authorities.

4) Partial Invoicing: Acculogic may deliver Products described in a particular order in one or more instalments, and where less than all of the Products are included in an instalment, the Buyer shall be liable to pay the price of the Products that have been so delivered without any holdback or other allowance with respect to the Products remaining to be delivered by Acculogic under the particular order. Notwithstanding anything contained to the contrary, Acculogic reserves the right to invoice Buyer prior to shipment for components of Products acquired and being held by Acculogic specifically for Buyer pending completion of an order.

5) Incorrect or Incomplete Data: All prices quoted by Acculogic pertaining to Custom Engineering and Design Services are strictly based on the accuracy and completeness of the information, data and specifications provided by the Buyer to Acculogic. In the event that during the course of fulfilling its obligations to the Buyer in respect of an order, Acculogic discovers that information, data and/or specifications provided to it by the Buyer is inaccurate or incomplete, Acculogic may, in addition to any other rights and remedies which it may have at law or in equity: (a) terminate the order, by notice in writing, and invoice the Buyer for all work performed or Products ordered by or supplied to the Buyer in respect of the order up to and including the date on which such termination notice is given; (b) elect to proceed with the order and charge to the

Buyer all costs incurred by Acculogic on a time and materials basis by reason of the Buyer having provided Acculogic with incorrect information, data and/or specifications.

6) Title Retention: Title to and ownership of Products shall remain vested in Acculogic and shall not pass to the Buyer until: (a) Acculogic has been paid in full, the amount of the purchase price for the Products; and (b) Buyer has performed all of its obligations under this Agreement. Notwithstanding the foregoing, title to Products consisting of software licensed to Buyer shall remain in Acculogic. Buyer hereby grants to Acculogic a security interest (as that term as defined in the Personal Property Security Act (Ontario)) in Products sold to the Buyer as general and continuing collateral security to secure payment of the purchase price and grants Acculogic the unfettered right to register notice of its security interest in such Products under the applicable personal or movable property legislation of those jurisdictions, Acculogic, in its absolute discretion, deems appropriate. Buyer further agrees to execute any document or furnish any notices necessary to perfect such security interest.

7) Force Majeure: Acculogic shall not be liable for any damage caused or lost of profit of the Buyer arising from a failure by Acculogic to comply with its obligations under an order where that failure is attributable to circumstances beyond the reasonable control of Acculogic which include, but are not limited to, acts of God, fire, flood storm, epidemic, riot, public disorder, any terrorist act, acts of the Buyer, inability to obtain labour or material to meet the specifications of the Buyer, strike, transportation failure, any act of war (whether declared or not) or any governmental, military, or other similar entity, exercising de facto sovereignty for the time being in any relevant jurisdiction, including any embargo or restriction upon shipping or transport.

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8) Operating Environment: Buyer

covenants and agrees at its own expense to provide an operating environment which is suitable for the operation of Acculogic's Products at the Buyer's premises and to ensure that it will, at all times, have properly trained and qualified personnel on hand to assist with the installation and the operation of the Products provided by Acculogic.

9) Non-Solicitation: Buyer covenants and agrees with Acculogic that it will not, without the prior written consent of Acculogic (which consent may be unreasonably withheld) itself or in partnership or jointly or in conjunction with any other person, firm, association, syndicate, company, or corporation as agent, shareholder, or in any other manner (either directly or indirectly) approach, entice or endeavour to entice, solicit or interfere with any employees or consultant of Acculogic which has performed or will perform any services for the Buyer pursuant to this Agreement for the purpose of offering prospective employment to or retaining consultative services from the said employee and/or consultant as the case may be. Should the Buyer breach this covenant by soliciting any of the employees or consultants of Acculogic, it shall immediately pay to Acculogic as a placement fee, and not as a penalty, the equivalent of the pre-tax income paid to the subject employee or consultant, as the case may be, by Acculogic during the twelve (12) calendar months immediately preceding the calendar month in which the employee or consultant, as the case may be, is hired or retained by the Buyer.

10) Cancellation: The Buyer shall not, under any circumstances, have the right to cancel or reschedule an order without first receiving the expressed written consent of Acculogic (which consent may be arbitrarily withheld), and which may be conditional upon the Buyer paying to Acculogic a cancellation or rescheduling charge. A complete schedule of such charges is available from Acculogic and will be provided to the Buyer upon request.

11) Default: The Buyer shall be deemed to be in default of its obligations to Acculogic, if: (a) Buyer defaults in the payment of any amount owed by or to Acculogic or defaults in the observance or performance of anything required under an order and these terms and condition; (b) any formal or informal proceedings for the dissolution of, liquidation of, or winding up of, the affairs by the Buyer is instituted by, or against the Buyer, or where a resolution is passed or any other act undertaken for the winding up of the Buyer; or (c) Buyer is adjudged, bankrupt or becomes insolvent, or a petition in bankruptcy is filed against the Buyer, or where the Buyer makes an assignment for the general benefit of creditors or applies for relief under the Companies Creditors Arrangement Act (Canada) or where proceedings of any type are instituted in any jurisdiction in respect of the alleged insolvency or bankruptcy of the Buyer. Upon any such default, in addition to any other remedies it may have at law or an equity, Acculogic may cancel any other outstanding order from the Buyer, refuse to make deliveries and declare all amounts owing to Acculogic to be immediately due and payable.

12) Software: All Product consisting of software shall be delivered to Buyer and used subject to the terms and conditions of the Acculogic Software License Agreement included therewith, and which are hereby incorporated by reference.

13) Repair and Exchange: When a purchase order is issued for part repair, Acculogic will maintain the right to decide whether the part is repairable or not.

If the part is repairable and the repair work is completed, the final cost of repair as stipulated in the corresponding quotation and Purchase Order will be invoiced.

If the part cannot be repaired, then the invoice will be for basic inspection of the part. Non-repairable parts can be returned to the customer upon customer's request.

14) Exclusions and Limitations (a) THE WARRANTIES PROVIDED IN THIS AGREEMENT WITH RESPECT TO ANY PRODUCTS OR SERVICES SUPPLIED BY ACCULOGIC CONSTITUTE THE ONLY REPRESENTATION OR WARRANTY MADE BY ACCULOGIC AND ARE IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, ARISING IN FACT, IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE WHICH INCLUDE, BUT ARE NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) All descriptions of Products in in any quotation or order or any descriptions, plans and specifications furnished to the Buyer are for the sole purpose of identifying the Products and are only intended to suggest the nature of the Products and shall not be construed as a warranty regarding the nature or quality of the Products.

(c) Acculogic's total liability for all damages, losses and causes of action, whether in contract, tort or otherwise shall be limited to the price paid by the Buyer for the Products. In no event shall Acculogic be liable for general, special, incidental and/or consequential damages, which include but are not limited to, loss of profits, whether based on contract, tort, or otherwise or for any direct or indirect injury, damage or loss arising out of the performance or use or non-performance or non-use of the Products, The Buyer hereby waives and right to claim any punitive, aggravated or exemplary damages with respect to a breach of terms and conditions or the performance or non-performance of the Products whether such claim is based in contract, tort or otherwise.

15) Warranty For Non-Acculogic Products: Buyer acknowledges and agrees that the sole and exclusive warranty for any Products or accessory, attachment or module of Products not produced or manufactured by Acculogic shall be strictly limited to the warranty, if any, offered by the producer or manufacturer thereof and Buyer agrees to accept such

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manufacturer's warranty in lieu of all other warranties or conditions on the part of such manufacturer or Acculogic, express or implied.

16) Warranty Applicable to Acculogic

Products: (a) For the purposes of these provisions, "Warranty Period" means:

(i) ninety (90) days from date of shipment for Products that have been custom engineered or designed by Acculogic for Buyer; and

(ii) twelve (12) months from date of shipment for all non-custom designed Products or accessories, attachments or modules of Products produced or manufactured by Acculogic.

(b) Acculogic warrants that all Products made or produced by it will be free from defect in material and workmanship during the applicable Warranty Period, provided Buyer notifies Acculogic of such defect as soon as possible. Final determination as to whether a Product is actually defective rests with Acculogic or its duly authorized agents.

(c) Buyer agrees that in the event of a warranty claim during the Warranty Period, Acculogic may, in its discretion:

(i) require the Buyer to return the defective part to Acculogic in order to allow Acculogic to repair or replace the defective part;

(ii) provide the Buyer with replacement materials which shall then be utilized by technicians approved by Acculogic to repair the defective Products; or

(iii) repair the defective part at the site thereof.

(d) All returns to Acculogic shall be at the Buyer's expense, shipment prepaid by the Buyer, to the address specified by Acculogic. Buyer shall be responsible for proper packaging and will ensure that the Products or parts returned arrived at the proper destination undamaged in any way. Acculogic assumes no responsibility for improper or unauthorized returns of any kind. Acculogic will prepay shipment to the Buyer for all repair parts, replacement parts

and materials returned to the Buyer pursuant to the terms within warranty.

(e) All warranties are provided by Acculogic herein shall become null and void as to any particular Product or part upon its connection to equipment manufactured by anyone other than Acculogic unless prior to such connection taking place, Acculogic has established a written notice that such equipment is compatible with a particular Product or Acculogic's authorized representative inspects the equipment in an assembled and operative condition and determines that it is compatible with the particular Products and gives written notice thereof. For these purposes, equipment shall be deemed to be incompatible with Products if it damages Products, or if, in the reasonable opinion of Acculogic or its authorized representative, it hampers or adversely affects the performance of Products in any way. Acculogic will provide to the Buyer a written quotation of fees and expenses which would be charged by Acculogic in order to investigate and determine equipment compatibility with Products upon request. Notwithstanding the foregoing, Acculogic reserves the unfettered right to refuse to investigate and determine compatibility and further reserve the unfettered right to determine the timing of any such investigation.

(f) In the event that a Product or, any part thereof is repaired or replaced, such event shall not enlarge or extend the Warranty Period for any Products beyond the Warranty Period for the original Products as provided above.

17) Governing Law: These terms and conditions shall be governed by the law of the Province of Ontario (excluding the United Nations Convention on Contracts for the International Sale of Goods) and each of Acculogic and the Buyer hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario.

18) Severability: If any provision of these terms and conditions is determined by a

court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable all of the terms and conditions, but rather these terms and conditions shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

19) Assignment: The Buyer shall not transfer or otherwise assign its rights and obligations under an order and these terms and conditions, in whole or in part, without the prior written consent of Acculogic, which consent may be arbitrarily withheld. Any purported assignment or transfer without Acculogic's consent shall constitute a breach by Buyer of its obligations to Acculogic and shall entitle Acculogic, in addition to any other remedies it may have at law or an equity, to terminate any and all outstanding orders and claim for any damages thereby suffered or incurred.

20) Waiver: The failure of Acculogic to insist upon the Buyer strict performance in any of the terms and conditions hereunder or a delay by Acculogic in exercising any of its remedies hereunder shall not constitute a waiver of these terms and conditions or a waiver of any default or any remedy.

21) Entire Agreement: The parties confirm that there are no representations, warranties, terms, conditions, collateral agreements, or understandings between the parties other than an expressly set forth in this Agreement.

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