



SENSEEKER ENGINEERING INC. PRODUCT SALES TERMS AND CONDITIONS

Revised January 21, 2022

In order to expedite acceptance of a Purchase Order the customer is asked to ensure the PO (i) references the Senseseeker quotation; (ii) identifies the specific products, quantities, and pricing in a manner consistent with the quotation; (iii) specifies the delivery location; (iv) specifies the PO as being subject to the “Senseseeker Engineering Inc. Product Sales Terms and Conditions”, and (v) does not subject the order to any additional terms (e.g., Customer’s standard terms). Any variation from these requirements will require legal review which may result in delay or rejection of your PO.

These terms and conditions (the “Terms”) apply to Purchase of Senseseeker Engineering Inc. (“Senseseeker”) Products.

1. INTRODUCTION

- 1.1. This agreement (the “Agreement”) consists of these Terms, the Senseseeker quotation including any referenced product specifications (the “Quote”), and Customer’s Purchase Order (the “PO”). The “Products” are those products described in the Quote and identified for purchase in the PO. Any products (including their respective product specifications) quoted in the Quote but not selected for purchase in the PO are not part of the Agreement. The Terms, Quote, and PO form the entirety of the Agreement between the parties with respect to the subject matter hereof and no course of dealing, usage of the trade, discussions, or other writings shall apply unless expressly included herein.
- 1.2. Unless otherwise specified in the Quote, Senseseeker’s quotations expire 30 days after issuance.
- 1.3. Senseseeker only accepts POs by an express written acceptance. No other action by Senseseeker shall form the basis of acceptance of a PO.
- 1.4. Unless expressly stated on the face of the PO with specific reference to this clause (i.e., “Clause 1.4 of the Senseseeker Engineering Inc. Product Sales Terms and Conditions”) in the event of a conflict between the documents of the Agreement the following order of precedence (from highest to lowest) shall apply: (1) the Terms, (2) the Software License Agreement (if applicable), (3) the Quote, and (4) the PO.
- 1.5. This Agreement may only be amended by a written document duly executed by both parties.

2. PRICING & QUANTITIES

- 2.1. The price of Products shall be as provided for in the Quote.
- 2.2. The quantities of the Products shall be as provided on the PO.
- 2.3. In the event the total price indicated in the PO is inconsistent with the above prices and quantities, Senseseeker at its option may deliver either the quantities indicated in the PO or a quantity that most closely meets but does not exceed the dollar amount indicated in the PO. In either case Customer shall be responsible for price of the Products delivered.

3. SOFTWARE LICENSE & WARRANTY

- 3.1. If the Products include Senseseeker Software (“Software”), clause 3.2 shall apply.



- 3.2. Senseeker software is licensed and warranted by Senseeker in accordance with the license terms provided in Senseeker's Software License Agreement which is incorporated herein by reference.

4. TAXES

- 4.1. Customer is responsible for all taxes and charges applied by any Government to the Products or their sale, delivery, shipment or use (collectively, "Taxes"). Such Taxes will be added to the invoiced price of the Products and will be paid by Customer, except to the extent that Customer provides a tax exemption certificate acceptable to Senseeker. Customer shall indemnify and defend Senseeker for all claims and costs that result from an invalid or inadequate tax exemption certificate.

5. INVOICING & PAYMENT

- 5.1. Unless a different invoice/payment schedule is set forth in the Quote (in which case Senseeker shall invoice in accordance with such schedule) Senseeker shall invoice Customer upon delivery. If delivery is in installments, Senseeker may invoice for the Products delivered with each installment.
- 5.2. Customer shall pay all invoices in full NET 30. Payment shall be in United States Dollars. Interest will accrue on all past due amounts from the date of invoice at the lesser of 1.5% per month or the maximum rate allowable by applicable law. Senseeker shall have no obligation to provide the applicable Limited Warranty during any period which an invoice to Customer under this Agreement or another order is past due.

6. SHIPPING & DELIVERY

- 6.1. Unless expressly stated in the Quote, delivery of Products is EXW Senseeker's Plant (INCOTERMS 2019) which is located at the Senseeker address indicated on the Quote. Senseeker may invoice Customer for any costs incurred as a result of delayed pickup of the Products.
- 6.2. Unless expressly stated in the Quote, the scheduled delivery dates, if any, are estimates and are subject to change.

7. INSPECTION, ACCEPTANCE, REPLACEMENT

- 7.1. Customer must report any damage, shortage or errors in the delivery to Senseeker within 3 business days of receipt by Customer.
- 7.2. Customer may accept the Products by express acceptance, using the Product, or failing to reject the Product within 7 days of receipt by Customer.
- 7.3. Prior to acceptance, Customer may inspect the Products to confirm the Products conform to the product specifications. Customer may reject Products that exceeds the ordered quantities or do not conform to the product specification by notifying Senseeker and returning the rejected Products in accordance with the return procedures set forth in Article 8 within 2 business days of notice to Senseeker.
- 7.4. Senseeker shall provide a replacement or credit for Products returned under Clause 7.3 and determined by Senseeker not to meet the product specifications; Products returned but determined by Senseeker not to be in original condition, to have been used for any purpose other than acceptance testing, to have been subject to conditions outside the product specifications, or



subject to mishandling, shall be deemed accepted by Customer and returned to Customer at Customer's expense. For avoidance of doubt, "mishandling" as used throughout these Terms includes but is not limited to exposing the Products to electrostatic discharge (ESD) and failing to follow any handling instructions indicated on in the product specification or the product packaging.

8. RETURNS

- 8.1. To return Product under Clause 7.3 or under Article 12 Customer shall contact Senseeker and request a return merchandise authorization (RMA). Senseeker will provide Customer instructions for return of the Product and Customer shall follow such RMA procedures.
- 8.2. In the case the return of Software, Customer shall represent in writing to Senseeker that it has permanently delete/destroyed all copies of the Software.
- 8.3. For the purpose of this Article 8 Customer is responsible for costs associated with shipment to and from Senseeker.

9. CHANGES

- 9.1. Changes to this Agreement, including changes to the type and quantity of Products that are the subject of the order may be made by written amendment signed by both parties. Senseeker has no obligation to accept Customer's proposed changes to the Agreement.

10. CANCELLATION

- 10.1. Senseeker may delay or cancel delivery if (i) Customer is in breach of this Agreement, another agreement with Customer, or an agreement where payment is contingent on receipt of funds from Customer; (ii) Customer becomes insolvent, files or has filed against it a petition in bankruptcy (or any similar petition under any insolvency law of any jurisdiction), or proposes any dissolution or liquidation; (iii) a receiver, trustee, custodian or similar agent is appointed or takes possession of any property or business of Customer; (iv) Customer receives a "going concern" qualification from its auditors; or (v) Senseeker determines in its reasonable discretion that there has been a material adverse change in Customer's financial condition as previously represented to Customer by Senseeker.

11. IMPROPER & UNAUTHORIZED USE

- 11.1. Customer shall not use the Products in a way that is inconsistent with the product specifications or in or with equipment that may cause operation of the Product that is inconsistent with the product specifications.
- 11.2. Customer shall discontinue use of Products that have been operated outside of the product specifications.
- 11.3. Unless expressly stated to the contrary in Senseeker's quotation of product specifications, Customer shall not use the Products for or in connection with the design, development, manufacture, construction, inspection, testing, storage, operation or maintenance of any nuclear reactor, facility for fabrication or conversion of nuclear fuel, nuclear explosive devices, maritime nuclear propulsion plants, rockets, ballistic missile systems or unmanned air vehicles, chemical or biological weapons, or applications where failure or improper operation may result in death or personal injury.



- 11.4. Unauthorized use, improper use, or mishandling shall void Senseeker's obligations and any applicable warranty of the Product.

12. HARDWARE LIMITED WARRANTY & REMEDY

- 12.1. Senseeker warrants to Customer the hardware portion of the Products will be free from defects in workmanship and materials and materially conform to the product specifications for 1 year from the original delivery or, for replacement products, 90 days from delivery of the replacement product or the remainder of the original delivery warranty period, whichever is longer. The warranty period maybe modified by statements in the Quote.
- 12.2. To make a warranty claim Customer shall promptly, and in all cases within the warranty period, notify Senseeker of the defect and request an RMA in accordance with Article 8. After obtaining an RMA for a warranted Product, Customer shall return the product to Senseeker's facility within 14 days. Failure to follow Senseeker's RMA procedures will void the warranty.
- 12.3. Once the hardware portion of the Product is received at Senseeker's facility in accordance with the RMA procedures Senseeker shall determine if the Product is covered under warranty. Products that have been mishandled, used improperly, or in an unauthorized way are not warranted. If the Product is covered by warranty, Senseeker's exclusive obligation is to, at its option, repair or replace the Product, or if Senseeker determines it is not commercially reasonable to do so, to refund Customer the purchase price of the returned Product. All products that are replaced become the sole property of Senseeker.
- 12.4. The warranties and remedies set for in this article are made exclusively to the Customer and Senseeker has no obligation to Customer's customer, transferees, end users, or any other third party.
- 12.5. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTE, CUSTOM, ORAL OR WRITTEN STATEMENTS OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NONINFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. SENSEEKER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER WARRANTY OR LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OF ITS PRODUCTS. Some states or jurisdictions do not allow the exclusion or limitation of implied warranties for certain transactions. Consequently, the above limitations and exclusions may be thereby affected. When the implied warranties are not allowed to be excluded in their entirety, Customer agrees that the duration of the implied warranty will be limited to the warranty periods set forth above.

13. LIMITATION OF LIABILITY

- 13.1. Senseeker assumes no liability to Customer or any third party in connection with any delay in delivery or replacement of Products, regardless of the cause of the delay.
- 13.2. Any and all costs incurred by Customer in connection with the inspection, testing, troubleshooting, maintenance, and use of the Products is solely at Customer's expense.



Senseeker assumes no liability for such costs even if it results in the conclusion that the Product is defective.

- 13.3. Senseeker's entire liability for breach of warranty and Customer's sole and exclusive remedy therefore is limited to repair or replacement of the Products in conformance with the Limited Warranty. If after repeated efforts Senseeker is unable to repair the Products to good working order, or to replace it with Products in good working order, or to make the Software operate, all as warranted, Customer's sole and exclusive remedy shall be limited to refund of actual dollar amounts paid for the Products upon Senseeker's receipt of such defective Products and Customer's representation in writing that it has permanently delete/destroyed all copies of the Software.
- 13.4. TO THE FULL EXTENT ALLOWED BY LAW, IN NO EVENT SHALL SENSEEKER OR ITS SUPPLIERS OR LICENSORS HAVE ANY LIABILITY, WHETHER BASED IN WARRANTY, CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER CAUSE OF ACTION FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF OR UNAUTHORIZED ACCESS TO INFORMATION OR DATA, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE, OR INTERRUPTION OF ITS PRODUCTS, WHETHER FORESEEABLE OR NOT, AND EVEN IF SENSEEKER OR ITS AUTHORIZED RESELLER, DISTRIBUTOR OR DEALER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SENSEEKER BE LIABLE TO CUSTOMER (OR ANYONE WITH A VALID CLAIM THROUGH CUSTOMER, ALL LIABILITY FOR WHICH SENSEEKER EXPRESSLY DISCLAIMS) FOR DAMAGES IN EXCESS OF THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S) EVEN IF SENSEEKER SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE. THE ABOVE LIMITATIONS OF LIABILITY WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE. Some states or jurisdictions do not allow the exclusion or limitation of liability for personal injury or death. Consequently, the above limitations and exclusions may be thereby affected in those circumstances.
- 13.5. The parties agree that the allocation of risk contained in this Agreement is reasonable and is reflected in the price of the Products.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1. Customer shall not disclose any information Senseeker provides and identifies as proprietary ("Proprietary Information"). Customer shall only disclose Proprietary Information to Customer's personnel that have entered into a non-disclosure agreement with Customer that is at least as restrictive as this Agreement.
- 14.2. For Products delivered under this Agreement containing embedded software, such software is non-exclusively licensed for use solely as part of the Product it is embedded within.
- 14.3. Customer shall not (i) reverse engineer the Products; (ii) attempt to derive the source code or algorithms of the licensed software, except to the extent expressly authorized by statutory law; (iii) modify or create derivative works of the licensed software; (iv) separate the licensed software from the hardware; or (v) modify or remove any proprietary markings or notices. Customer's breach of this clause shall result in the immediate termination of the license. Further, if Customer has made any derivative work from the licensed software, Customer irrevocably



- assigns and agrees to assign all right, title and interest in the same to Senseeker. Customer shall deliver such derivate work to Senseeker in a format acceptable to Senseeker.
- 14.4. For Products delivered to Customer in the United States Senseeker will defend Customer against a claim that the Products supplied hereunder infringe a patent, trademark or copyright of a third party which applies in the United States. Senseeker will pay resulting costs, damages and attorney's fees finally awarded, provided that Customer (i) gives Senseeker prompt written notice of such claim, (ii) cooperates with Senseeker in the investigation and defense of such claim and (iii) grants Senseeker exclusive control of the defense and settlement thereof.
 - 14.5. Senseeker's obligations under Clause 14.4 is conditioned on Customer's agreement that if the Products supplied to Customer, or the use or operation thereof, becomes, or in Senseeker opinion is likely to become, the subject of a claim of infringement, Customer will permit Senseeker at Senseeker's option and expense, either to procure the right for Customer to continue using the Products in the United States or to replace or modify the Products so that the Products become non-infringing, and if neither of the foregoing alternatives is available on terms which are commercially reasonable in Senseeker judgment, Customer will return the Products on written request by Senseeker. Senseeker agrees to grant Customer a credit for the returned Goods which is equal the depreciated value of the returned Products based on a useful lifetime of 3 years from the date of delivery.
 - 14.6. Senseeker shall have no obligation to provide the indemnification under Clause 14.4 to the extent the claim of infringement arises out of (i) the combination or integration of the Product with a product, process, system, or element that Senseeker has not supplied or specified; (ii) alteration of the Product by anyone other than Senseeker; (iii) compliance with specifications of the Customer; or (iv) use of the original Product after Senseeker has provided a modified version to avoid infringement.
 - 14.7. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF SENSEEKER, AND SHALL BE CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OR ACTION FOR PATENT, TRADEMARK, COPYRIGHT OR TRADE SECRET INFRINGEMENT WITH RESPECT TO PRODUCTS SUPPLIED BY SENSEEKER.

15. LEGAL COMPLIANCE

- 15.1. Except as set forth in the Quote, Senseeker makes no representation that the Products comply with any federal, state or local laws, regulations, codes, or standards in the United States or any other country and Customer agrees that it is responsible for verifying compliance with applicable law.
- 15.2. Customer shall be responsible for obtaining any permits and inspections required for the installation and/or use of the Products.
- 15.3. The Products may be subject to export license or other international trade controls. Customer represents and warrants that Customer will comply with applicable United States laws and regulations ("U.S. Law"); this includes but is not limited to U.S. Law relating to export or re-export, including the Export Administration Act of 1979, as amended, the U.S. Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR") U.S. Foreign Assets Control Regulations ("OFAC"), and U.S. customs regulations (19 CFR Part 4 to 199). Customer will not transfer or re-export Products in their original form or as incorporated



into other products without obtaining required U.S. authorization. Customer will not transfer or re-export Products for use by a U.S.-sanctioned country or company.

- 15.4. If the sale and shipment of Products is to a foreign company and/or foreign destination, Senseseeker will, at Customer's request, apply for and use reasonable efforts to obtain any required United States Government license to permit export of the Products from the United States. Customer shall promptly provide information requested by Senseseeker for determining the license requirements and for obtaining necessary U.S. Government license. Nothing herein contained shall be construed as imposing an obligation on Customer to itself obtain required U.S. export licensing authority needed for Senseseeker to fulfill this order. If Senseseeker, after applying reasonable efforts, is unable to obtain U.S. Government license that it believes necessary to fulfill this order, Senseseeker may cancel the affected part of the order without liability except to return to Customer any pre-paid funds for the cancelled part.
- 15.5. Except as provided in 15.4, Customer shall obtain all required U.S. authorizations including export licenses to permit the U.S. export of Products being purchased by Customer from Senseseeker.
- 15.6. Customer represents and warrants that it is not on the Denied Persons, Specially Designated Nationals or Debarred Persons List, is not located in a country subject to embargo under EAR, ITAR or OFAC regulations and is not otherwise prohibited by U.S. or foreign law from purchasing the Products hereunder.

16. FORCE MAJEURE

- 16.1. Except for the obligation to make payments, neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, fire, embargo, riot, sabotage, governmental act or failure of third party power or telecommunications networks, provided that the delayed Party: (a) gives the other Party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If a Force Majeure event makes delivery commercially impractical, Senseseeker may terminate the order with respect to the affected Products without liability.

17. GOVERNMENT CONTRACTS

- 17.1. If this Agreement is a subcontract under a U.S. Government contract for which Customer is at a higher tier than Senseseeker only those Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses that are mandatory are made part of this Agreement. For avoidance of doubt, any FAR or DFARS clause whose flow down to this Agreement is not mandatory is not made part of this Agreement. The Customer shall identify in the PO that the order is a U.S. Government subcontract and either provide a copy of the U.S. Government contract (redacted as necessary) or provide a complete list of FAR and DFARS clauses that may be mandatory. In all incorporated FAR and DFARS clauses, the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under this Agreement and effect the proper intent of the clause. Customer shall exercise an incorporated FAR or DFARS clause against Senseseeker only to the extent that such clause has been exercised against Customer by Customer's customer.



18. MISCELLANEOUS

- 18.1. In the event that any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired, and a valid, legal and enforceable provision of similar intent and economic impact therefore shall be substituted instead.
- 18.2. This Agreement shall be construed in accordance with the laws of the State of California (without regard to the provisions thereof governing conflicts of laws). Each Party consents, for the sole purpose of and limited to actions and proceedings arising under this Agreement, to the jurisdiction of the courts of the State of California for the purpose of enforcing the rights and obligations created under this Agreement. The parties acknowledge that this Agreement has been negotiated and shall be performed in Santa Barbara, California, and agree that the exclusive venue for all disputes which arise under this Agreement shall be the Superior Court in and for Santa Barbara County, California.
- 18.3. This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same agreement. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both Parties have duly executed or caused to be duly executed a counterpart of this Agreement. Any copy of this Agreement made by reliable means is considered an original.