



## SENSEKER ENGINEERING INC.

### PRODUCTS & SERVICES TERMS AND CONDITIONS

Revised December 5, 2023

*In order to expedite acceptance of a Purchase Order the customer is asked to ensure the PO (i) references the Senseker 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 "Senseker Engineering Inc. Products & Services 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.*

#### 1. INTRODUCTION

- 1.1. This agreement (the "Agreement") consists of these *Senseker Engineering Inc. Products & Services Terms and Conditions* (the "Terms"), the Senseker quotation including any referenced product specifications (the "Quote"), and the Customer's Purchase Order (the "PO"). The "Products" are those products described in the Quote, if any, and identified for purchase in the PO. The "Services" are those services described in the Quote, if any, and identified for purchase in the PO. Any products or services (including their respective 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. "Customer" is the party placing the PO or, if the Agreement does not include a PO, the customer identified on the Quote. A PO issued by Customer to Senseker properly referencing these Terms shall constitute Customer's acceptance of this Agreement regardless of whether the PO is signed by a representative of Customer.
- 1.3. Unless otherwise specified in the Quote, Senseker's quotations expire 60 days after issuance.
- 1.4. Senseker only accepts POs by an express written acceptance. No other action by Senseker shall form the basis of acceptance of a PO.
- 1.5. Unless expressly stated on the face of the PO with specific reference to this clause (i.e., "Clause 1.5 of the Senseker Engineering Inc. Products & Services Terms and Conditions") or within the Senseker Quote, 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.
- 1.6. This Agreement may only be amended by a written document duly executed by both parties.
- 1.7. If Customer is (1) not integrating or otherwise adding value to the Products and Services and (2) is procuring the Products and Services on behalf of a third party end user ("End User"), Customer (i) shall promptly identify such End User to Senseker and (ii) hereby consents to direct, non-confidential communication between Senseker and End User, which may include all details of the Agreement, in connection with this Agreement.



## **2. PRICING & QUANTITIES**

- 2.1. The price of Products and Services shall be as provided for in the Quote.
- 2.2. The quantities of the Products and Services 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, Senseker 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 and Services delivered.

## **3. SOFTWARE LICENSE & WARRANTY**

- 3.1. If the Products include Senseker Software ("Software"), clause 3.2 shall apply.
- 3.2. Senseker software is licensed and warranted by Senseker in accordance with the license terms provided in Senseker'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, Services, or their sale, delivery, shipment or use (collectively, "Taxes"). Such Taxes will be added to the invoiced price and will be paid by Customer, except to the extent that Customer provides a tax exemption certificate acceptable to Senseker. Customer shall indemnify and defend Senseker 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 Senseker shall invoice in accordance with such schedule) Senseker shall invoice Customer upon delivery of the Products and completion of the Services. If delivery/completion is in installments (e.g., line items), Senseker may invoice for the Products/Services 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. Senseker 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, PLACE OF PERFORMANCE**

- 6.1. Unless expressly stated in the Quote, delivery of Products is EXW Senseker's Plant (INCOTERMS 2019) which is located at the Senseker address indicated on the Quote. Senseker may invoice Customer for any costs incurred as a result of delayed pickup of the Products.
- 6.2. Unless otherwise provided for in this Agreement, all Services will be performed at Senseker's facilities or as otherwise determined by Senseker.
- 6.3. Unless expressly stated in the Quote, the scheduled delivery and completion dates, if any, are estimates and are subject to change.



## **7. PRODUCTS: INSPECTION, ACCEPTANCE, REPLACEMENT**

- 7.1. Customer must report any damage, shortage or errors in delivered Products 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" or "mishandled" 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. PRODUCT RETURNS**

- 8.1. To return Products under Clauses 7.3, 10.3, or 11.2 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. 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.
- 8.3. In the case the return of Software, Customer shall represent in a writing acceptable to Senseeker that it has permanently delete/destroyed all copies of the Software.
- 8.4. For the purpose of this Article 8 Customer is responsible for costs associated with shipment to and from Senseeker, including risk of loss.

## **9. IMPROPER & UNAUTHORIZED USE OF PRODUCT**

- 9.1. 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.
- 9.2. Customer shall discontinue use of Products that have been operated outside of the product specifications.
- 9.3. 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.

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

#### **10. SERVICE: STANDARD OF CARE, ACCEPTANCE, LIMITED WARRANTY & REMEDY**

- 10.1. Senseeker will perform the Services in a competent, workmanlike manner, using Senseeker's best practices for work of this kind and will substantially meet the requirements of the Services set forth in this Agreement ("Standard of Care").
- 10.2. Senseeker warrants that for a period of 6 months from the date of completion the Services will meet the Standard of Care. To make a warranty claim under this Clause 10.2, Customer shall promptly, and in all cases within the warranty period, notify Senseeker in writing of the Services that fail to meet the Standard of Care. Upon Customer's prompt notification to Senseeker, Senseeker shall, in its sole judgment, reperform the noncompliant portion of the Services or, if impossible to reperform, or if not commercially reasonable to reperform, or if Senseeker fails to satisfactorily perform after repeated attempts, refund Customer for the noncompliant portion of the Services. If feasible, as a condition for providing a refund, Customer shall discontinue use of and return or destroy the noncompliant portion of the Services being refunded and, if requested by Senseeker, provide written assurance of so doing acceptable to Senseeker.
- 10.3. For Services provided to repair or upgrade Equipment provided by Customer (e.g., a Senseeker product owned by Customer), Senseeker's exclusive warranty is that the repair or upgrade will be free from defects in workmanship and materials and materially conform to the specifications for 1 year from completion of the Services. For avoidance of doubt, no warranty is made with respect to the Equipment generally, but only with regard to the repair or upgrade. To make a warranty claim under this Clause 10.3, 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. Once the Equipment is received at Senseeker's facility in accordance with the RMA procedures Senseeker shall determine if a valid warranty claim exists. Equipment that has been mishandled, used improperly, or in an unauthorized way are not warranted. If a valid warranty claim exists, Senseeker's exclusive obligation is to, at its option, repair or replace warranted repair or upgrade to the Equipment, or if Senseeker determines it is not commercially reasonable to do so, to refund Customer the price of the repair or upgrade. All refunds are contingent upon Senseeker's receipt of the refunded portion of the Equipment and Customer's representation in writing that it has permanently delete/destroyed all copies of any Software being refunded, as applicable. The warranty provided for Equipment under this Clause 10.3 is in lieu of the general warranty for Services provided under Clause 10.2.
- 10.4. Senseeker may reduce the paid-out portion of any refund under Clause 10.2 or Clause 10.3 by any amounts owed to Senseeker by Customer under this or another agreement.
- 10.5. All Equipment and Services that are replaced or refunded shall be the sole property of Senseeker. Any other Equipment provided by Customer will be made available for return to Customer.
- 10.6. Customer may accept the Services by express acceptance, using the Services (including use of repaired or upgraded Equipment), or failing to reject the Services within 7 days of receipt by Customer.



## **11. HARDWARE LIMITED WARRANTY & REMEDY**

- 11.1. 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.
- 11.2. To make a warranty claim under this Article 11, 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.
- 11.3. 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. Senseeker may reduce the paid-out portion of any refund by any amounts owed to Senseeker by Customer under this or another agreement. All refunds are contingent upon Senseeker's receipt of the refunded Product and, if requested by Senseeker, Customer's representation in writing that it has permanently delete/destroyed all copies of the Software, as applicable. All products that are replaced or refunded shall be the sole property of Senseeker.

## **12. WARRANTIES EXCLUSIVE - DISCLAIMER**

- 12.1. The warranties and remedies set for in Articles 10 and 11 are the exclusive warranties and remedies provided under this Agreement. The warranties and remedies are made exclusively to the Customer and Senseeker has no obligation to Customer's customer, transferees, end users, or any other third party.
- 12.2. 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 AND SERVICES. 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 applicable limited warranty period set forth above.

### **13. CUSTOMER MATERIALS**

- 13.1. Unless otherwise provided for in this Agreement, Customer shall be responsible for shipment, import/export costs of any kind, insurance, taxes and risk of loss associated with making available samples, materials, Equipment, and the like (“Customer Materials”) to Senseeker to perform the Services. Customer Materials do not include the Products that are the subject of this Agreement. Customer shall report any damage, shortage or errors in returned Customer Materials to Senseeker within 3 business days of receipt by Customer.
- 13.2. Senseeker, with reasonable prior notice, shall make Customer Materials available for pickup during normal business hours at Senseeker’s then current address. Should Customer fail to collect Customer Materials within 3 months of completion of the Services or fail to enter another agreement with Senseeker requiring such Customer Materials within the same period of time, Customer releases Senseeker of any and all obligations it may have with regard to Customer Materials and Customer agrees such Customer Materials shall be deemed abandoned. Prior to the foregoing release taking effect Senseeker shall provide 1 month’s written notice to Customer identifying the affected Customer Materials.
- 13.3. If Customer abandons Customer Materials in Senseeker’s possession, Senseeker may, in its sole discretion, take ownership and title to Customer Materials or invoice Customer the cost of disposing or returning Customer Materials. Article 5 shall apply to such invoices.
- 13.4. CUSTOMER REPRESENTS AND WARRANTS THAT IT HAS FULLY INSURED AGAINST THE RISK OF LOSS OR DAMAGE TO CUSTOMER MATERIALS. CUSTOMER HEREBY RELEASES SENSEEKER FROM ANY LIABILITY IN CONNECTION WITH THE CUSTOMER MATERIALS EXCEPT IN THE CASE OF SENSEEKER’S WILLFUL MISCONDUCT. CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SENSEEKER, ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY CLAIM RELATED TO THE LOSS OR DAMAGE OF CUSTOMER MATERIALS.

### **14. CHANGES**

- 14.1. Changes to this Agreement, including changes to the type and quantity of Products or Services 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.

### **15. SUSPENSION & TERMINATION**

- 15.1. Senseeker may suspend or terminate this Agreement or a portion thereof 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.
- 15.2. Senseeker shall notify Customer in writing of any suspension or termination of this Agreement.

### **16. LIMITATION OF LIABILITY**



- 16.1. Senseker assumes no liability to Customer or any third party in connection with any delay in delivery or replacement of Products or completion of Services, regardless of the cause of the delay.
- 16.2. Any costs incurred by Customer in connection with the inspection, testing, troubleshooting, maintenance, and use of the Products and Services is solely at Customer's expense. Senseker assumes no liability for such costs even if it results in the conclusion that the Product is defective or that the Services did not meet the standard of care.
- 16.3. TO THE FULL EXTENT ALLOWED BY LAW, IN NO EVENT SHALL SENSEKER 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 SENSEKER OR ITS AUTHORIZED RESELLER, DISTRIBUTOR OR DEALER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SENSEKER BE LIABLE TO CUSTOMER (OR ANYONE WITH A VALID CLAIM THROUGH CUSTOMER, ALL LIABILITY FOR WHICH SENSEKER EXPRESSLY DISCLAIMS) FOR DAMAGES IN EXCESS OF THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S) AND SERVICES EVEN IF SENSEKER 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.
- 16.4. The parties agree that the allocation of risk contained in this Agreement is reasonable and is reflected in the price of the Products and Services.

## 17. CONFIDENTIAL INFORMATION

*17.1. Select one. If none are selected (c) shall apply by default:*

- (a) ☐ Confidential Information will not be exchanged under this Agreement.
- (b) ☐ Exchange of Confidential Information for this Agreement shall be governed and protected by the terms of the following non-disclosure agreement (NDA):

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(c) ☒ Customer shall treat and safeguard any Confidential Information received from Senseker, whether oral or in writing (provided that it is properly identified as such), in the manner set forth herein, unless such information (i) can be proven to be at the time of disclosure part of the public domain by virtue of publication or otherwise; (ii) can be proven to be at the time of disclosure known to Customer or its employees; (iii) subsequent to the time of disclosure can be proven to have become part of the public domain by publication or otherwise through no fault of Customer or its employees and without breach of this Agreement; or (iv) can



be proven to be or to have been lawfully disclosed to Customer by a third party without an obligation of confidentiality upon Customer. Senseker will give notice to Customer of information disclosed to Customer which Senseker deems proprietary as follows: (i) all written Confidential Information shall be conspicuously labeled as such using a Confidential or Proprietary nomenclature; and (ii) all Confidential Information disclosed orally shall be identified as such at the time of disclosure, and summarized in writing to Customer within thirty (30) days after disclosure and conspicuously labeled as such using a Confidential or Proprietary nomenclature. Customer agrees that any Confidential Information disclosed pursuant to this Agreement shall be used by Customer solely for the purposes of this Order. Customer shall not distribute, disclose or disseminate Senseker Confidential Information in any way, to anyone, with exception of only those of its employees who require and are given such information for the purposes set forth above. Customer shall use reasonable care, consistent with Customer's practices for maintaining the confidentiality of its own confidential information, to keep Confidential Information disclosed hereunder confidential. Customer agrees that it has or shall enter into agreements with its employees which will safeguard Confidential Information disclosed hereunder, consistent with the terms of this Agreement. Customer agrees that upon written request from Senseker it will return all original documents, as well as any copies made thereof in any form, in the possession of Customer and containing Confidential Information of Senseker, except for one copy thereof which may be retained solely for archival purposes.

- 17.2. Unless defined in an NDA incorporated by "(b)" above, Confidential Information shall mean and all Trade Secrets, knowledge, data and other information of a confidential or proprietary nature which is owned, held, or known by a disclosing party and relating to products, potential products, and specifications, processes, know-how, designs, formulas, data, inventions, customer lists, business plans, marketing plans and strategies, pricing strategies and other subject matter pertaining to any research, business, or planned or contemplated business.

## **18. INTELLECTUAL PROPERTY RIGHTS**

- 18.1. Senseker's performance under this Agreement is not "work made for hire." Except as otherwise provided for in this Agreement all intellectual property rights resulting from Senseker's performance under this Agreement shall be exclusively owned by Senseker and all previously existing or independently developed Senseker intellectual property are the exclusive property of Senseker ("Senseker Information") regardless of whether such Senseker Information is included, incorporated or used in the Products or Services or otherwise disclosed to Customer.
- 18.2. Senseker hereby assigns to Customer the copyright in all reports generated by Senseker and required for delivery to Customer under this Agreement, exclusive of any Senseker Information included in such reports but generated independently from this Agreement. Senseker retains a limited license to use such reports for the benefit of Customer. For such Senseker Information Senseker provides Customer a non-exclusive license to reproduce such material in connection with the report.
- 18.3. 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.
- 18.4. 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 Senseker. Customer shall deliver such derivative work to Senseker in a format acceptable to Senseker.

- 18.5. For Products and Services delivered to Customer in the United States Senseker will defend Customer against a claim that the Products/Services supplied hereunder infringe a patent, trademark or copyright of a third party which applies in the United States. Senseker will pay resulting costs, damages and attorney's fees finally awarded, provided that Customer (i) gives Senseker prompt written notice of such claim, (ii) cooperates with Senseker in the investigation and defense of such claim and (iii) grants Senseker exclusive control of the defense and settlement thereof, and (iv) reasonably cooperate to mitigate the claim.
- 18.6. Senseker's obligations under Clause 18.5 is conditioned on Customer's agreement that if the Products and Services supplied to Customer, or the use or operation thereof, becomes, or in Senseker opinion is likely to become, the subject of a claim of infringement, Customer will permit Senseker at Senseker's option and expense, either to procure the right for Customer to continue using the Products and Services in the United States or to replace or modify the Products and Services so that the Products and Services become non-infringing, and if neither of the foregoing alternatives is available on terms which are commercially reasonable in Senseker judgment, Customer will return the Products and Services on written request by Senseker. Senseker agrees to grant Customer a credit for the returned Products which is equal the depreciated value of the returned Products based on a useful lifetime of 3 years from the date of delivery.
- 18.7. Senseker shall have no obligation to provide the indemnification under Clause 18.5 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 Senseker has not supplied or specified; (ii) alteration of the Product by anyone other than Senseker; (iii) compliance with specifications of the Customer; or (iv) use of the original Product after Senseker has made available a modified version to avoid infringement.
- 18.8. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF SENSEKER, 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 AND SERVICES SUPPLIED BY SENSEKER.

## **19. LEGAL COMPLIANCE**

- 19.1. Except as set forth in the Quote, Senseker makes no representation that the Products and Services 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.
- 19.2. Customer shall be responsible for obtaining any permits and inspections required for the installation and/or use of the Products and Services.
- 19.3. The Products and Services may be subject to export license or other international trade controls. Customer represents and warrants that Customer will comply with applicable laws and



regulations 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 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 and Services hereunder.

## **20. FORCE MAJEURE**

- 20.1. 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, Senseeker may terminate the order with respect to the affected Products and Services without liability.

## **21. GOVERNMENT CONTRACTS**

- 21.1. If this Agreement is a subcontract under a U.S. Government contract for which Customer is at a higher tier than Senseeker 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. 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 Senseeker only to the extent that such clause has been exercised against Customer by Customer’s customer.

## **22. MISCELLANEOUS**

- 22.1. The division of these Terms into articles and clauses is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
- 22.2. The terms “including” as used in these Terms shall mean “including, but not limited to.”
- 22.3. 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.
- 22.4. 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.

- 22.5. 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. Any copy of this Agreement made by reliable means is considered an original.