

**1. General Conditions**

Products and service furnished by OakRiver Technology, LLC (the "**Company**") are sold on the terms and conditions stated herein, the terms included in any applicable proposal submitted by Company to Customer, and the terms included on any corresponding purchase order(s) for such Products and Services, as agreed in writing by Company (collectively, the "**Contract**"). Notwithstanding any terms or conditions on Customer's order or other form, Company's quotes and performance of the Contract are expressly made conditional on Customer's agreement to all such terms and conditions contained in the Contract, unless otherwise specifically agreed to in writing by Company. In the absence of such specific agreement, commencement of performance and/or delivery by Company shall be for Customer's convenience only and shall not be deemed or construed to be a waiver of any of the terms and conditions set forth in the Contract or as acceptance of any of Customer's terms and conditions. Acceptance of any Product or Service by Customer shall be deemed acceptance of the terms and conditions stated in the Contract.

**2. Prices/Payment Terms**

Unless otherwise agreed to in writing, prices are exclusive of all expense of shipment and delivery, including but not limited to, freight charges, export fees, special packaging, insurance, taxes, duties, tariffs and other special items (collectively, "**Shipment Expenses**"). All prices and other charges are quoted and shall be paid in United States currency free of all expense to Company for collection charges.

Payment terms are set forth in the Contract. No payment by Customer, or acceptance by Company, at any time of a lesser amount than shall be due from Customer to Company, or pursuant to a qualified endorsement, shall be treated other than as payment on account. Customer shall pay interest to Company on any delinquent payment from the due date thereof until paid, at the rate of one and one-half percent (1-1/2%) per month or such lesser amount as may be established by applicable law.

Unless otherwise agreed in writing, Customer shall pay any future or present sales, use, privilege, occupation, excise or other tax, custom duties, fee or charge of any kind whatsoever, including but not limited to those imposed upon or with respect to the production, sale, purchase, delivery, storage, manufacture, processing, use or consumption of any of the Products or services to be performed, imposed by any governmental authority on the transaction set forth in the Contract.

In the event that Company incurs any costs due to the inability, unwillingness or other fault of Customer, to perform normally and unrestricted with the Contract, including without limitation design approval, manufacturing, testing, timely delivery and installation, or if Customer otherwise suspends performance by Company without Company's prior written consent, any and all such costs, including without limitation, material costs and labor, storage fees, and administrative fees associated with the delay, shall be paid by Customer immediately to Company. In addition to such payment, if Company is delayed in achieving payment milestones set forth in the Contract due to the inability, unwillingness or other fault of Customer, Company shall invoice as per the payment milestone dates set forth in the Contract and Customer shall pay Company upon receipt, unless otherwise agreed in writing.

**3. Shipping/Installation**

Unless otherwise agreed in writing, if Company shipments are made from a U.S. origin to a Customer's United States destination, the shipment terms will be F.O.B. Company's facility, city and state. If Company shipments are made from a U.S. origin to a Customer's international destination, the shipment terms will be FCA (INCOTERMS 2010) Company facility, city, state and country. Risk of loss of the Products shall pass to the Customer at F.O.B. or FCA point. Delivery to Customer shall be deemed complete at such F.O.B. or FCA point. All delivery dates specified by Company are approximate and not guaranteed. Company and Customer may mutually agree in writing to changes in the shipping schedule. Unless otherwise agreed in writing, the Products will be packed, crated and/or labeled in accordance with Company's customary methods and procedures. If Customer requests or requires special packaging, crating, labeling, or variance from Company's customary methods and procedures, such requests and requirements will be at Customer's expense. If the Contract provides for installation of the Products, Customer agrees to perform all necessary preparations for efficient and complete installation, to unload all Products and place them adjacent to the place of installation, and to assist as required in the installation, all at Customer's sole risk and expense.

**4. Excusable Delays**

Company shall not be liable for any delay, failure, loss or damage resulting from any delay in, failure or inability to complete any manufacturing, shipment, delivery or installation of the Products, performance of the services referred to herein or Company's obligations, which directly or indirectly arise out of or result from any cause not reasonably within the control of Company, including but not limited to, an act of God; the inability to obtain necessary labor, materials, equipment, utilities, services or facilities; any negligence, act, failure to act, or delay in acting caused by or on the part of Customer or any governmental authority; strikes or other labor difficulties arising from any cause whatsoever; accidents or destruction such as fire, explosion, flood, epidemics, war or civil disturbance; or other force majeure circumstances beyond the reasonable control of Company (each an "**Excusable Delay**"). In the event of any Excusable Delay, Company's performance shall be extended by a period of times lost by reason of such Excusable Delay or such other period as is reasonable under all the circumstances.

**5. Limited Warranty/Warranty Disclaimer**

Company warrants for ninety (90) days after commencement of the warranty period that all Products manufactured by Company are free from defects in material and workmanship. The warranty period shall begin upon the first of the following events to occur: (a) the completion of installation; (b) Customer acceptance; or (c) ninety (90) days after delivery, whichever comes first.

The warranty will be fulfilled by repair, or in the sole discretion of Company, replacement of the defective Products. The cost of labor will be covered only if the Part is returned to Company for repair. With respect to Services, Company's sole liability for any defect therein shall be to perform again, at Company's expense, such Services.

The warranty is subject to fulfillment by Customer of all of the following conditions: (i) give Company written notice of any claimed defect immediately upon discovery; (ii) provide easy access for Company to inspect the claimed defective part in the configuration that the defect was discovered, and repair or replace the part; and (iii) install, operate, use and

maintain the Products in accordance with all provided an available instructions, guidelines and rules for the installation, operation, use and maintenance of such Products.

This warranty applies only to the original Customer. Product and defective parts shall not be returned without Company's prior approval. All Products and defective parts returned to Company shall be the property of Company.

NO WARRANTY IS MADE WITH RESPECT TO PRODUCTS AND PARTS NORMALLY DESIGNATED AS CONSUMABLES OR THOSE SUBJECT TO NORMAL WEAR AND TEAR; FAILURE OR DAMAGE DUE TO ACCIDENT, ABUSE, IMPROPER OPERATION, OR ABNORMAL ENVIRONMENTAL CONDITIONS; AND/OR SYSTEMS NOT INSTALLED BY COMPANY. EXCEPT AS EXPRESSLY SET FORTH HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY HEREBY DISCLAIMS, AND CUSTOMER HEREBY WAIVES, ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY PRODUCTS AND SERVICES SOLD AND PERFORMED HEREUNDER. THE FOREGOING REMEDIAL MEASURES ARE COMPANY'S SOLE AND EXCLUSIVE OBLIGATIONS AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES ON ACCOUNT OF THE PRODUCTS AND SERVICES THAT DO NOT CONFORM TO COMPANY'S EXPRESS WARRANTIES ABOVE.

**6. Limitation of Liability**

NOTWITHSTANDING ANY PROVISION OF THE CONTRACT TO THE CONTRARY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF THE LEGAL THEORY UNDER WHICH LIABILITY IS IMPOSED, (a) IN NO EVENT SHALL COMPANY BE LIABLE UNDER WARRANTY OR ANY OTHER PART OF THE CONTRACT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF PRODUCTION, AND LOSS OF BUSINESS OPPORTUNITY, EVEN IF COMPANY WAS ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF ANY SUCH DAMAGES; AND (b) IN NO EVENT SHALL COMPANY'S TOTAL LIABILITY UNDER THE CONTRACT EXCEED THE PRICE PAID, OR TO BE PAID BY THE CUSTOMER FOR THE PRODUCTS AND SERVICES SOLD AND PERFORMED HEREUNDER.

COMPANY ACKNOWLEDGES AND AGREES THAT IT DOES NOT ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY TO CUSTOMER OR OTHERWISE FOR (i) PERSONAL INJURY OR DEATH ARISING FROM ITS GROSS NEGLIGENCE; (ii) FRAUD; (iii) WILLFUL MISCONDUCT; OR (iv) ANY MATTER FOR WHICH IT WOULD BE ILLEGAL TO EXCLUDE OR ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY TO CUSTOMER OR A THIRD PARTY.

**7. Cancellation by Customer**

At any time prior to completion of the Contract, Customer may cancel the Contract upon written notice to Company; provided, however, Customer shall pay Company within thirty (30) days of such cancellation, all costs and expenses incurred prior to receipt of such notice of cancellation, including such costs and expenses incurred for all labor, supplies and material, engineering work, services, pertinent overhead expenses and all commitments made to Company's suppliers, subcontractors and

others. Company will calculate cancellation costs and expenses using Company's standard time and material rates and material mark-ups in effect at the time of cancellation. In no event shall the aggregate of the foregoing exceed the Contract price.

**8. Indemnification/Intellectual Property**

Customer will indemnify and hold harmless Company, its affiliates and their respective officers, directors, shareholders, employees, agents, and representatives, and defend any action brought against same with respect to any claims, judgments, actions, suits, demands, damages, liabilities, costs or expenses (including, but not limited to, reasonable attorneys' fees and legal expenses) associated with or arising from Customer's ownership, use or operation of the Products. Customer specifically waives any immunity provided against this indemnity by an industrial insurance or workers' compensation statute, as applicable.

Company shall defend or settle any suit or proceeding brought against Customer to the extent that it is based on a claim that any Products made to Company design infringe any existing United States patent, provided that Company is notified in writing by Customer within ten (10) days of Customer's knowledge of such claim or service of process in such infringement action, whichever is earlier, and Company is given complete authority, information, and assistance for defense of same. Company shall pay all damages awarded therein against Customer on account of any such infringement, but Company shall not be responsible for any cost, expense or compromise incurred by Customer without Company's prior written consent.

If any Product is, in Company's opinion, likely to or does become the subject of a claim for patent infringement, or in case any such Product in such suit is held to constitute infringement and the use of such Product is enjoined, Company may at its expense and option either (a) procure for Customer rights to continue using the infringing Product; (b) replace the infringing Product so that it becomes non-infringing; or (c) accept return of the Product and refund to Customer the amount paid for the Product, less depreciation or a reasonable rental for past use. The foregoing state Company's entire liability for patent infringement by Products.

The two preceding paragraphs of this Paragraph 8 shall not apply to, and Company shall have no responsibility respecting infringement (i) by use of Products furnished hereunder in a manner or for a purpose other than that specified in the Contract or in Company published literature or other materials furnished by Company to Customer; (ii) by unauthorized alteration or additions to the Products by Customer; (iii) by use of the Products in combination with other products in a system not designed by Company that are the cause or a contributing cause of such infringement claim; (iv) by use of Products for practice of a method not designed by Company; or (v) by any Product manufactured by Company in accordance with the design or specifications required by Customer. No license is granted or patent indemnity made and neither of the foregoing are to be implied with respect to the patent rights of third parties which pertain to methods or processes which may be performed by the Products or to articles which may be manufactured by the use of such Products.

All right, title and interest in and to any and all intellectual property rights in and to Company's Products and services, and all underlying methods, processes, ideas, concepts, information and know-how related thereto, and otherwise owned or licensed by Company prior to the Contract effective date shall remain vested in Company following the

Contract effective date. Further, all right, title and interest in and to any and all intellectual property rights, including, without limitation, any and all inventions, innovations and discoveries of Company, that arise after the Contract effective date and are related to the Products and services sold and performed under the Contract shall vest in Company. In conjunction with the foregoing, Customer shall not reproduce, distribute, modify, create derivative works of or license, sublicense or otherwise use for any third party any Company intellectual property, nor shall Customer attempt to derive any of the underlying structure or methodology of any Company intellectual property. All Company intellectual property, and any embodiments or manifestations thereof, shall be deemed Confidential Information (as defined below in Paragraph 11) and treated accordingly.

#### **9. Title Retention/Insurance**

Title to the Products shall remain with Company until the entire purchase price, whether represented by notes, open account or otherwise is paid in cash to Company.

Customer acknowledges and agrees that until title effectively transfers to Customer, Customer shall:

- a) Maintain the Products in good operating condition and keep the Products free from liens and encumbrances, permit inspection by Company at all times, not use or permit use of Products in any manner injurious to them, not remove or permit removal of the Products from their original installation location, not make or permit any alteration to the Products without the prior written consent of Company; and
- b) Obtain and maintain at Customer's sole cost and expense, fire, hazard, extended coverage, vandalism and malicious mischief insurance covering the Products in an amount sufficient to protect Company's interest in the Products and such policies of insurance are to be made payable to Company at the time of loss. Customer shall assume all resulting loss that Company may not recover through such insurance.

#### **10. Customer's Default**

If Customer fails to make any payment due or otherwise breaches any covenant or obligation under the Contract (including but not limited to Customer's failure to meet a deadline or schedule milestone), other than the export control and economic sanctions compliance obligations set out in Paragraph 15, and such breach remains uncured for a period of ten (10) days following receipt of written notice from Company detailing such breach, Company may, in addition to all remedies available at law or in equity, (a) declare the entire unpaid balance of the Contract immediately due and payable without further notice; (b) defer shipment under the Contract, and under any other contract with Customer; (c) cancel any undelivered portion of the Contract or any other contract with Customer, in whole or in part, in which event Customer shall pay Company cancellation charges in accordance with Paragraph 7 hereof; and (d) terminate the Contract, in whole or in part, for default. If Company determines that Customer has breached its export control and economic sanctions compliance obligations set out in Paragraph 15, or that continued performance by Company would otherwise violate or expose Company to adverse consequences under applicable export control or economic sanctions laws, regulations, orders, or requirements, then Company shall have the right to immediately suspend or terminate the Contract by notifying Customer of Company's

determination, in which case Company shall not be required to continue performance of its obligations under the Contract.

#### **11. Confidential Information**

Company may provide to Customer certain of its confidential, proprietary and trade secret business or technical information in connection with its performance under the Contract (collectively, "**Confidential Information**"). Confidential Information includes, but is not limited to, technical data, design drawings, know-how, information related to research, products, software, services, development, inventions, processes, engineering, marketing, techniques, internal procedures, business and marketing plans or strategies, finances, employees, and business opportunities. Without the prior written consent of Company, Customer shall not at any time disclose, or cause or permit any employee, agent or affiliated, controlled or controlling entity of Customer to disclose, to any person, firm, corporation, or other entity, or use for its own or their benefit, or reproduce, the Confidential Information. Upon cancellation or termination of the Contract, Customer shall promptly return to Company, or destroy as directed by Company (with certification of same), all Confidential Information, including copies thereof.

#### **12. Waiver**

No waiver by a party shall be effective unless in writing and signed by a duly authorized representative of that party. No waiver shall be inferred from a party's conduct.

#### **13. Severability**

In the event any provision contained herein is invalid as applied to any fact or circumstances, its invalidity shall not affect the validity of any other provisions or of the same provision as applied to any other fact or circumstances.

#### **14. No Third-Party Beneficiaries**

Except as otherwise expressly set forth in the Contract, nothing is intended to, or shall, create any third-party beneficiaries, whether intended or incidental, and neither party shall make any representation to the contrary.

#### **15. Governing Law/Venue/Export Law**

This Contract shall be governed, interpreted and construed, and the legal relationships created hereby shall be construed, in accordance with the laws of the State of Delaware, without regard to its conflicts-of-law principles. Specifically excluded are the provisions of the UN Convention On the Sale of Goods (1980) and the UN Convention On the Limitation Period In The International Sale of Goods, as Amended by Protocol.

Customer agrees that it will comply with all applicable import or export control and economic sanctions laws, regulations, orders and requirements, including, without limitation, those of the United States, and the jurisdictions in which Company and Customer are established or from which Products, Confidential Information, and/or Services may be supplied, in connection with its receipt and use of such Products, Confidential Information, and/or Services, except to the extent such compliance would be prohibited or penalized by U.S. law. In no event shall Customer use, transfer, re-transfer, release, import, export or re-export Products, Confidential Information, or Services if doing so would violate or cause Company to violate such applicable laws, regulations, orders or requirements. Further, Customer represents that it is not (a) designated for export controls or sanctions restrictions under applicable export control and economic sanctions laws, regulations, orders and requirements (including without limitation designated on the

U.S. List of Specially Designated Nationals and Blocked Persons), (b) owned 50% or more or controlled by one or more such designated persons, or (c) organized under the laws of, ordinarily resident in, or owned or controlled by the government of a country or territory subject to comprehensive U.S. sanctions.

Each of the parties hereby (a) agree that any litigation, action or proceeding arising out of or relating to this Contract shall be instituted in the state courts of the State of Minnesota and the United States District Courts located therein; (b) waives any objection which it might have now or hereafter to the venue of any such litigation, action or proceeding; (c) irrevocably submits to the jurisdiction of any such courts in any such litigation, action or proceeding; and (d) waives any claim or defense of inconvenient forum. Each of the parties hereby consents to service of process by registered mail, return receipt requested, at such party's corporate headquarters.

#### **16. Non-Exclusive Remedies**

All rights and remedies of Company shall be cumulative and the rights and remedies provided herein are in addition and not in lieu of any rights and remedies Company may have under law or in equity. The exercise by Company of any one right or remedy shall not exclude any other right or remedy allowed by law or in equity.

#### **17. Assignment; Delegation**

The Contract shall not be assigned without the written approval of duly authorized representatives of both Company and Customer, except that the Contract may be assigned by Company without the approval of Customer (a) to an affiliate of Company; (b) pursuant to a merger, consolidation or similar business combination that results in a change of control of Company; or (c) to an acquirer of all or substantially all of the business and assets of Company which relate or pertain to the Products or services which are the subject of the Contract. Any unauthorized assignment shall be deemed null and void. Notwithstanding the foregoing, Company reserves the right, in its sole discretion, to subcontract or delegate the performance of all or any part of the Contract; provided, however, Company shall remain responsible for its performance obligations under the Contract and the acts and omissions of its subcontractors and delegates.

#### **18. Entire Agreement/Amendments**

The Contract constitutes the entire agreement and understanding between the Company and the Customer with respect to the Products and services, to be sold or performed hereunder. The Contract shall supersede and prevail over all prior communications between Company and Customer, whether oral or written.

All amendments or modification to the Contract must be in writing and signed by authorized representatives of both Company and Customer.