

TERMS AND CONDITIONS OF SALE



1. **Order:** The BUYER hereby orders from SMS Data Products Group, Inc. ("SMS" or "SELLER") the goods and/or services (collectively "Products") as listed on the SMS Proposal, Quotation, Statement of Work or other associated documents ("Proposal"). This agreement and the Proposal shall only be binding upon SMS upon acceptance by SMS of your authorized order to SMS in writing. In the event BUYER'S Purchase Order includes terms and conditions that differ from or are in addition to the following, such terms and conditions are expressly rejected by SMS and are null and void.

2. **Price:** The BUYER agrees to pay the total purchase price and or license fee according to the terms described in the Proposal. If no payment terms are listed in the Proposal, all payments shall be made upon delivery of the products or services, not to exceed thirty (30) days. Due dates are from the date of delivery. In addition, BUYER agrees to pay any sales or other taxes levied on or measured by such purchase price or license fee, or arising from the use of the product(s) and parts or maintenance supplied, including without limitation, any additional sales, use, gross receipts, privilege, excise and personal property taxes unless otherwise specified or unless BUYER provides SMS with a tax exemption certificate. Prices provided herein do not, unless otherwise specified, include supplies (e.g., cassettes, diskettes, paper, primer, ribbons, ink, rollers, etc.). BUYER shall pay a late fee that is the lesser of 1.5% per month, or the maximum penalty permitted by law, for all overdue payments. Prices are subject to change without prior notice and SMS shall thereafter notify BUYER of any price increases. BUYER shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with SMS.

3. **Delivery:** For services, delivery shall take place at the location identified in the Proposal. For product, delivery shall take place at SMS' facilities unless otherwise specified in the Proposal or documents referenced in the Proposal. SMS reserves the right to make delivery in installments, which will be separately invoiced, and BUYER shall make payment for installment per invoice terms without regard to subsequent deliveries.

4. **Inspection:** BUYER shall inspect the Products at delivery and shall notify SMS of any defects or discrepancies in the Products. Unless BUYER notifies SMS in writing immediately and in no case later than ten (10) days of any defects or discrepancies, it shall be conclusively presumed, by BUYER and SMS, that: the services were properly performed and meet all applicable specifications; and that Products were delivered in good repair, were operable, and meet all applicable specifications; and that BUYER accepts the Products as delivered or performed.

5. **Maintenance and Service:** Where set forth in the Proposal, SMS agrees to provide maintenance and service to BUYER. Unless onsite service is specified in the Proposal, maintenance or service will be at SMS' service department and shall not include the cost of any parts or supplies. All maintenance or service, except that performed under manufacturer's or supplier's warranty, will be performed at the rates set forth in the Proposal, or if none are specified, then current rate shall apply. BUYER is responsible for all freight, pickup, and/or delivery charges where SMS performs maintenance or service.

6. **Rescheduling and Cancellation:** No order, Agreement or any part thereof may be rescheduled or cancelled without SMS's prior written consent.

7. **Returns:** Unless otherwise agreed by the parties in writing, goods that are correctly furnished by SMS per the purchase order may not be returned unless BUYER receives written authorization from SMS. If returns are authorized by SMS, a return merchandise authorization ("RMA") number must be provided by SMS. SMS reserves the right to charge a restocking fee for any approved return.

8. **Limited Warranties:**

(a) On all products or third-party services, the manufacturer's or supplier's warranty is expressly given to BUYER upon delivery of said products or third-party services. Except as expressly set forth in SMS's Proposal, **SMS DISCLAIMS ALL OTHER WARRANTIES OF ANY THIRD-PARTY PRODUCT OR SERVICES.**

(b) **BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTIES IN THIS AGREEMENT SHALL BE FOR SMS, AT SMS' OPTION, TO EITHER PERFORM A CORRECTION OF THE SERVICE OR REPLACE THE EQUIPMENT. EXCEPT FOR THE EXPRESS WARRANTY CONTAINED IN THIS AGREEMENT, SMS DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. EXCEPT FOR ITS EXPRESS WARRANTIES, SMS MAKES NO OTHER WARRANTIES. ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SMS AND EXCLUDED FROM THIS AGREEMENT.**

9. **Title and Risk of Loss:** Title to the products and any risk of loss or damage to products purchased hereunder shall pass to Buyer in accordance with specified

INCOTERMS on the individual Orders. Title, or, where applicable, licenses for BUYER to use the Products, are retained by SMS until payment in full is received. BUYER grants SMS title to all parts replaced during any maintenance or service. BUYER grants SMS a purchase money security interest in all Products listed on this Proposal, until SMS has received payment in full. BUYER agrees to execute all documents necessary for SMS to perfect the security interest, if BUYER fails to execute the necessary documents, SMS may file this Agreement to perfect the security interest.

10. **Non-Solicitation:** For the duration of this agreement and for a period of one (1) year thereafter, persons in the employment of either party involved with this Agreement shall not, except by the mutual consent of the parties, be employed by the other party. This restriction, however, does not prohibit either party from hiring any person as a result of the use of an independent employment agency or as the result of the use of a general solicitation, such as an advertisement.

11. **Alteration, Modifications, and Attachments:** Any alteration, additions, improvements, or attachments on the good(s), or equipment, or software subject to maintenance or service, which is not authorized in writing by SMS, shall be solely at BUYER's expense and risk. To the extent that any BUYER alteration, addition, improvements, modification, or installation affects the performance or operation of the good(s), equipment, or software serviced or maintained by SMS, every warranty under this Agreement, including without limitation, any implied warranty of merchantability, shall be deemed waived by the BUYER and null and void, and SMS shall have no further obligations to the BUYER thereafter.

12. **Software License:** BUYER expressly agrees to all manufacturers' or suppliers' software licensing documents at the time of delivery and shall execute all such software license agreements upon the request of SMS. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the good(s) with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such good(s).

13. **Liability:** SMS' liability under this Agreement for any breach hereof is limited to those rights in the indemnity clause and conferred on BUYER under the warranties and it is hereby agreed that those remedies are BUYER's exclusive and sole remedy. BUYER's exclusive and sole remedy in case of non-delivery by SMS shall be limited to refund of the amount of the purchase price paid and received by SMS as down payment. SMS shall not be liable for any loss, damages, or injury, either personal or business, of any kind to any premises or property arising from the use of the product(s) or service(s), regardless of the form of action, whether contract, tort, or otherwise. Notwithstanding anything to the contrary contained herein, or stated in the Proposal, the maximum liability of SMS to BUYER or any other person, whether such liability arises under contract, tort or otherwise shall in no case exceed the price paid to SMS for the specific product or service which caused the damage. **IN NO EVENT SHALL SMS BE LIABLE TO BUYER FOR SPECIAL, MULTIPLE, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR FROM ANY DAMAGE RESULTING FROM LOSS OF USE, DATA, OR PROFITS.**

14. **Indemnity:** Subject to Article 13 hereof, BUYER and SMS (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible or intellectual property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of BUYER and SMS, the loss or expense shall be borne by each party in proportion to its degree of liability.

15. **Applicable Law:** The laws of the Commonwealth of Virginia shall govern this Agreement, without regard to conflicts of law principles that would require the application of the laws of any other jurisdiction. Any legal proceedings arising out of or concerning this Agreement or the Products purchased or licensed under this Agreement shall be brought in the appropriate state or federal court nearest to, or within, Fairfax County Virginia. BUYER agrees to pay all costs, including reasonable attorney's fees, of collecting monies due SMS under this Agreement. **THE PARTIES EXPRESSLY DISCLAIM AND EXCLUDE THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**

16. **Termination:** SMS may terminate this Order if a) BUYER fails to pay any amount when due under this contract; b) BUYER fails to accept conforming Products supplied hereunder; c) BUYER has not performed or complied with any of these Terms and Conditions, in whole or in part, and fails to remedy the breach within ten (10) calendar days following receipt of written notice specifying the grounds for the breach; or d) if BUYER becomes insolvent or if any petition is filed or proceedings commenced by or against BUYER relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

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17. **Confidentiality:** All information or assistance of a technical or business nature, including the contents of this Agreement, provided by either party in connection with the negotiation of this Agreement or performance, hereunder shall be deemed to be of a proprietary or private nature ("Confidential") and shall be received by either party in confidence and not revealed to third parties or applied to uses or purposes outside performance of obligations under this Agreement. However, if the information is delivered for the purpose of delivery to the Government and is not marked with appropriate restrictive markings required by the Government, the information or assistance shall not be deemed Confidential and the recipient of the information ("Recipient") shall have no obligation with respect to any such information provided by the other party ("Owner"). In addition, information shall not be considered Confidential if the information: (a) is already known to Recipient; (b) is or becomes publicly known, through publication, inspection of the product, or otherwise, and through no wrongful act of Recipient; (c) is received from a third party without similar restriction and without breach of this Agreement; (d) is independently developed by Recipient; (e) is furnished to a third party by Owner without a similar restriction on the third party's rights; (f) is approved for release by written authorization of Owner; (g) is disclosed pursuant to the lawful requirement or request of a Governmental agency or disclosure is permitted by operation of law.

18. **Independent Contractors.** The parties are independent contractors for all purposes under this Order and cannot obligate any other party without prior written approval. The parties do not intend anything in this Order to allow any party to act as an agent or representative of a party, or the parties to act as joint venturers or partners for any purpose. No party is responsible for the acts or omissions of any other.

19. **Organizational Conflict of Interest – FAR Subpart 9.5 Compliance:** BUYER must immediately notify SMS if, at any time during the term of this Agreement, BUYER becomes aware that it has an actual or potential conflict of interest.

20. **Anti-Bribery and Anti-Corruption:** BUYER represents and warrants that it is in compliance and shall comply with all applicable anti-bribery and anti-corruption laws, including the U.S. Foreign Corrupt Practices Act, and has not, directly or indirectly, offered, paid, promised, or authorized the giving of money or anything of value to any government official for the purpose of influencing any act or decision of such government official. BUYER is not on, nor is BUYER associated with any organization that is on, any list of entities maintained by the United States government that identifies parties to which the sale of goods or services is restricted or prohibited.

21. **Trade Compliance:** BUYER's purchase of Offerings and access to related technology (collectively, the "Materials") are intended for its own use, not for resale, export, re-export, or transfer. BUYER is subject to and responsible for compliance with the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use, and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. BUYER represents and warrants that it is not the subject or target of, and that BUYER is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States, European Union or other applicable jurisdictions.

22. **Publicity:** No news releases or public announcements concerning this Agreement or the work to be performed hereunder shall be issued by the BUYER without the prior written consent of SMS.

23. **Notices:** All notices and communications to be given under these Terms and Conditions shall be in writing and shall be deemed delivered upon hand delivery, confirmed facsimile communication, email, or three (3) days after deposit in the mail of the home country of the party, postage prepaid, by certified, registered, first class or equivalent mail, addressed to the parties at their addresses set forth on the Offer, Confirmations and/or Agreement.

24. **Force Majeure:** Neither party will be in default for any delay or failure to perform due to causes beyond its control and without its fault or negligence including, but not limited to, acts of God, fire, flood, acts of war, terrorism, government action, pandemics, inability to obtain goods, equipment of transportation. If Supplier's delivery is delayed, Buyer may, at Buyer's sole option, cancel deliveries scheduled during the excusable delay period or elect to extend the period of performance to cover the period of delay caused by the excusable delay.

25. **Assignment and Subcontracting:** Neither party shall assign, transfer or novate this Order, or any right or obligation thereunder or delegate any performance without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing SMS may use Affiliates or other qualified subcontractors to perform its obligations hereunder, provided that the relevant party to the Order shall remain responsible for the performance thereof.

26. **Severability:** If any provision of this Order is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, that provision will be severed from this Order; the remaining provisions will remain in full force and effect; and a similar legal, valid and enforceable provision will be substituted in lieu of the severed provision.

27. **Survival:** All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Agreement, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and product support obligations shall survive the expiration or termination of this Agreement.

28. **Entire Agreement:** This document constitutes the entire Agreement between the BUYER and SMS. It is intended as a complete and exclusive statement of the terms of the Agreement and no course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. No agent, employee, or representative of SMS has any authority to bind SMS to any affirmation, representation or warranty concerning the product(s) or service(s) sold under this Agreement, unless the same is included within this written Agreement. This Agreement may be modified or rescinded only by a written instrument signed by the parties hereto or by their duly authorized agents.

29. **Headings:** The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

30. **Waiver:** Waiver by SMS of any provision hereof in one instance shall not constitute a waiver as to any other instance.

31. **Order of Precedence:** Where the terms of this agreement and the BUYER's purchase order or other ordering document conflict, this document shall take precedence.

32. **Disputes:** Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CONTRACT.**

33. **Electronic PO:** The parties agree that this Contract may be executed by fax, facsimile, email, or similar electronic means and shall be as effective as and as binding as if the Contract was executed with original signatures.

34. **SMS is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**