

Terms and Conditions – AMERICAS

1. Definitions

- 1.1 “Buyer” shall mean the entity whose principal place of business is not in Germany that places an Order for Product with a Traxon Technologies company.
- 1.2 “Traxon” shall mean the Traxon Technologies company with whom the order is placed: Traxon Technologies Ltd., a Hong Kong company, or Traxon Supply USA, Inc., a New York corporation.
- 1.3 “Conditions” shall mean the General Sale Terms & Conditions set out in this document.
- 1.4 “Contract” shall mean the contract and/or agreement for the sale and purchase of the Product concluded between Buyer and Traxon.
- 1.5 “Product” shall mean the item or items which Traxon is to supply to the Buyer under the Contract and in accordance with the Conditions.

2. General

- 2.1 These General Sales Terms and Conditions (“Conditions”) apply to all sales of Product, and all quotations, order acknowledgements, and invoices from Traxon and to all Orders from Buyer and are the only terms and conditions applicable to the sale of the Product, except those relating solely to prices, quantities, delivery schedules, terms of payment, invoicing, shipping instructions, or descriptions of the products set forth in Buyer’s Order, or any alternate terms of sale contained in the Contract. If there is a conflict between these Conditions and the Contract, the provisions of the Contract shall prevail.
- 2.2 NO GENERAL TERMS OR CONDITIONS OF THE BUYER SHALL APPLY UNDER ANY CIRCUMSTANCES (INCLUDING ANY GENERAL TERMS OR CONDITIONS WHICH THE BUYER PURPORTS TO APPLY UNDER ANY ORDER, ACCEPTANCE OF ORDER, SPECIFICATIONS OR OTHER DOCUMENTS), UNLESS EXPRESSLY AGREED BY TRAXON IN WRITING.

3. Order & Confirmation

- 3.1 The Buyer shall send orders (“Orders”) to the Traxon in writing, listing the following items: (i) type(s) of Product; (ii) quantity of Product; (iii) applicable unit price; (iv) total price in the Order; and (v) time, place and conditions of delivery, according to Incoterms®2010. Each Order may contain only one place of delivery, unless specifically requested for in the Order and confirmed by the Traxon either by written confirmation or delivery of Product to the requested locations. The Buyer shall be liable for any incorrect information in an Order.
- 3.2 An Order is not binding on Traxon unless and until it is confirmed by Traxon in writing or Traxon has delivered the Product to Buyer according to such Order (“Confirmed Order”).
- 3.3 If Traxon disagrees with certain items in the Order, Buyer and Traxon shall discuss in good faith and resolve the differences so that the Buyer can submit a final Order acceptable to Traxon. Alternatively, Traxon may issue an Order Confirmation with different terms for Buyer to accept.

4. Delivery

- 4.1 Unless otherwise agreed in writing between Buyer and Traxon, Product shall be delivered according to delivery terms (according to Incoterms 2010) specified in the Confirmed Order.
- 4.2 Risk of loss shall be transferred to Buyer upon delivery. Except as otherwise provided, title to Product shall be transferred upon delivery to Buyer and payment of the full purchase price.
- 4.3 Products are shipped in Traxon’s standard packaging unless otherwise agreed in writing. Buyer shall be

responsible for the additional costs of any special packaging, delivery method or expedited delivery requested, which may be invoiced separately and in advance of shipment by Traxon.

- 4.4 Buyer shall take delivery according to the Confirmed Order. If the Buyer fails to take delivery, then:
- (a) Product shall be deemed to be delivered and the risk of loss shall transfer upon Traxon's making the Product available for Buyer according to the Confirmed Order;
 - (b) Traxon may elect, in its sole discretion, arrange for storage of the Product at Buyer's sole expense; or
 - (c) Traxon may cancel the order without liability to Buyer, and Buyer shall reimburse Traxon for any reasonable costs associated with the cancelled delivery.

5. Price & Payment

- 5.1 The price term shall be according to the Incoterms (2010) as specified in the Confirmed Order. The price shall be denominated in the currency specified in the Contract or applicable quotation. Price includes packaging, VAT, sales tax consumption tax and any other tax and customs duty that Traxon is required to pay under applicable law. If Buyer claims a tax exemption or direct payment permit, it shall provide Traxon with a valid exemption certificate or permit and indemnify and defend Traxon from any taxes, costs and penalties arising out of same.
- 5.2 Traxon reserves the right to adjust prices based on market conditions or unanticipated increases in the cost of producing and shipping the Products, such as raw materials, components, fuel, exchange rates or taxes. Traxon will inform Buyer in writing of the price adjustment. Buyer shall be deemed to have accepted the price adjustment unless Buyer informs Traxon that it wishes to cancel the Order within 14 days after receipt of the notice of price adjustment.
- 5.3 All payments are net 30 Days from Invoice Date, unless mutually agreed in writing. No discount shall be allowed upon receipt of invoice or for early payment.
- 5.4 Time for payment is of the essence. In addition to any other remedies Traxon might be entitled to, interest shall accrue on any sums unpaid at the due date at a rate of the lesser of: three percent (3%) above the base lending rate of HSBC at the due date; or the maximum amount permitted by law. Interest shall accrue from the due date until the date of receipt of all outstanding payments. In addition, Buyer shall compensate Traxon for any exchange loss between the payment currency and Traxon's local currency.
- 5.5 Buyer shall not deduct or withhold from the payment any amount still in dispute where Buyer and Traxon have not reached agreement or settlement, or until any final arbitral award or judgment.
- 5.6 If the Buyer orders Product specifically made for Buyer, Traxon may require Buyer to pay a deposit prior to commencement of production of Buyer's order. If Buyer cancels the Order or fails to pay the remainder of the purchase price when due, then, in addition to Traxon's other available remedies under applicable law, Buyer shall forfeit the deposit.

6. Quality & Inspection

- 6.1 Upon delivery, Buyer shall inspect the shipment and verify the quantity and quality of the Product. Product shall be deemed accepted, and Buyer will waive any claim for defects or incomplete shipment, unless Buyer notifies Traxon of any defects or shortfalls within fourteen (14) days from the date of delivery.
- 6.2 Product is warranted to perform in accordance with Traxon's quality standards and published specifications during the warranty claim period, subject to the terms and exclusions in the Traxon Warranty Statement. EXCEPT AS EXPRESSLY PROVIDED FOR IN THE CONDITIONS, SOFTWARE LICENSE AGREEMENT, WARRANTY STATEMENT OR CONTRACT, NO OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, IS GIVEN BY TRAXON AND ANY ADDITIONAL WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT POSSIBLE.

7. Intellectual Property Rights and Software

- 7.1 All rights, title and interest in and to the Goods, the Contract, the Order and/or the Order Confirmation (and any part thereof), other than those expressly granted herein, shall remain wholly vested in Traxon or its third party licensors. Buyer acknowledges that it has no rights or licenses whatsoever in respect of the Goods, the Contract, the Order or the Order Confirmation, save for the non-exclusive, limited right to use the Product and those expressly granted to it by this Contract.
- 7.2 If any Product ordered incorporates specifications, trademarks, copyrights, designs, technologies, information, patents or components required or provided by Buyer, then Buyer shall ensure that manufacture and sale of the Product by Traxon will not infringe any third party's intellectual property rights, and shall indemnify and defend Traxon against any third party claim of infringement arising from Traxon's use of intellectual property provided or required by Buyer.
- 7.3 Nothing in this Contract, an Order or Order Confirmation entitles Buyer to use any trademark of Traxon or its third party licensors, or any other mark confusingly similar thereto. Without the express prior written approval of the Traxon, no reference to the Traxon's trade name and trademark shall be made, without limitation, on the Buyer's stationeries, business cards, sales promotional materials or web pages/social media. If the Buyer is in the business of manufacturing products which incorporate Traxon's Goods, the use of Traxon's trade name and trademarks on the Buyer's products is strictly prohibited, except in cases where prior written approval has been obtained.
- 7.4 Any software included in the Order or embedded in the Product is licensed, not sold. The Software License Agreement (SLA) that accompanies the software governs the use, rights, warranty and restrictions for the software. By purchasing or using Traxon software, the Buyer hereby agrees to be bound by the SLA. The SLA should be read and understood carefully. Buyer may not transfer any software or rights to use the software unless specifically authorized by Traxon or otherwise permitted by law.

8. Cancellation

- 8.1 Traxon may immediately terminate the Confirmed Order if Buyer is insolvent, in bankruptcy, is appointed a receiver or liquidator, or is in proceedings of similar nature, or makes an assignment for the benefit of creditors.
- 8.2 If Traxon has reasonable grounds to question Buyer's ability to pay, Traxon may require Buyer to provide security or advance payment in part or in full for any Order even if the security or advance payment is not contemplated under the Contract or in the initial Order and/or Order Confirmation. If the Buyer fails to provide such security or advance payment, Traxon may elect to terminate the Confirmed Order with immediate effect.
- 8.3 Confirmed Orders may not be cancelled without Traxon's consent or as permitted in section 5.2. Buyer may not defer any order and will be liable for cancellation charges incurred by Traxon, which shall include without limitation a) payment of the full price for any finished Product or works in progress; b) payment for materials ordered pursuant to a Confirmed Order including any supplier's restocking charges; and c) other direct costs incurred by Traxon as a result of Buyer's cancellation.

9. Limitation of Liability

- 9.1 **Regardless of the legal theory, Traxon shall not be liable for (a) business interruption, down time, inability to use Buyer's equipment; (b) loss of revenue, lost savings, profits (including without limitation production profits, operating profits and resale profits) or sales or any other loss of possible benefit of Buyer; or (c) for any special, punitive, indirect, incidental or consequential damages of Buyer. Traxon's liabilities shall in no event exceed a maximum amount of the total price of the corresponding Confirmed Order. In case any breach by Traxon of the Contract, the Conditions or the Confirmed Order may also give rise to a claim of tortuous act at the same time, Traxon shall only be liable for breach of contract.**

- 9.2 Buyer shall indemnify, defend and hold Traxon harmless from and against all third party claims for losses, liabilities, costs and expenses, including legal fees, in relation to any loss or damage to property or injury to persons (including death) arising from (a) Buyer's breach of any of its obligations under the Contract, Conditions or Confirmed Order; (b) negligent use, abuse, misuse, misapplication, improper installation, handling or implementation of the Product; and/or (c) any modification of the Product without the express written authorization of Traxon.

10. Miscellaneous

- 10.1 Neither party shall be liable to the other for any inability or delay in performing its obligations under these Conditions or the Contract, if such inability or delay results from an unforeseeable cause beyond the party's reasonable control. These causes include, without limitation, acts or situations normally considered and called 'acts of God' or "Force Majeure" events, such as unavailability sources of materials and equipment, government priorities, or labor or transportation problems, provided that the party affected by a Force Majeure event shall use its best efforts to notify the other party of the inability or delay and minimize the impact of such Force Majeure event.
- 10.2 Each party shall protect and keep confidential all information that it receives from the other party which has been marked or identified as confidential or proprietary ("Confidential Information"). The receiving party will not disclose Confidential Information to any third party without the disclosing party's prior written consent, except if the disclosure is to an attorney or adviser subject to a duty of confidentiality to the receiving party or is mandated by law - and will use the Confidential only for the purpose of the Contract. This obligation shall not apply to information: which is or becomes public knowledge other than through a breach of any obligation of confidentiality to the disclosing party; which is independently developed by the recipient of the information; or that is lawfully received from a third party. The receiving party's duty to protect Confidential Information shall extend for a period of three (3) years from the later of the expiration of the party's obligations under the Conditions or termination of the Contract. Breach of this provision shall be considered a material breach of the Conditions, and the disclosing party may seek injunctive relief to enforce this provision.
- 10.3 Except as provided in the Contract, the Conditions and the corresponding obligations of the parties shall be governed by the law of the jurisdiction of where Traxon is incorporated or registered (i.e. the laws of Hong Kong, Germany or the State of New York). The United Nations Convention on Contracts for the International Sales of Goods is excluded.
- 10.4 The Conditions and all Confirmed Orders shall be an integral part of the Contract. The Contract, the Conditions, the Warranty and any applicable Software License Agreement shall constitute the entire Contract between Buyer and Traxon. Any changes to the Conditions or Confirmed Order must be in a writing that clearly identifies the change and is signed by Traxon.
- 10.5 Should any individual clause of these Conditions be held to be illegal, unenforceable or unfeasible, remaining clauses shall remain in full force and effect.
- 10.6 Neither party may assign the Conditions or Confirmed Order, in whole or in part, without the prior written consent of the other; provided however that Traxon may assign its rights and obligations under these terms to its affiliates and may grant a security interest in the receivables or assign proceeds of the sale without Buyer's consent.
- 10.7 **Buyer understands and agree that the limitations of liability set forth in the Conditions are a reasonable allocation of risk between the parties, and, absent such allocation, Traxon would not be able to charge the prices it is charging for the Product.**

11. Compliance with Laws

- 11.1 Traxon and Buyer shall strictly comply with all laws and regulations applicable to the performance of the party's obligations under the Order, Conditions or Contract, including any applicable anti-corruption laws.

11.2 Traxon shall not be obligated to fulfill its obligation hereunder if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargos or other sanctions.

11.3 Compliance with Export Control Regulations

- (a) If Buyer transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Traxon or works and services (including all kinds of technical support) performed by Traxon to a third party worldwide, Buyer shall comply with all applicable national and international (re-) export control regulations (e.g., the United States of America).
- (b) If required to conduct export control checks, Buyer, upon request by Traxon, shall promptly provide Traxon with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by Traxon, as well as any export control restrictions existing.
- (c) Buyer shall indemnify and hold harmless Traxon from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Buyer, and Buyer shall compensate Traxon for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the Buyer. This provision does not imply a change in burden of proof.