

## **Sol-Ark Standard Terms and Conditions of Sale**

### **1. General.**

These standard terms and conditions (the “Terms”) govern the sale by Sol-Ark (as defined below) of Products (as defined below) and the license of its software, including Firmware (as defined below), to the customer identified in a Sol-Ark order acknowledgement form or in a valid Sol-Ark quotation (the “Customer”). These Terms, together with any special terms specifically and expressly provided by Sol-Ark in writing on Sol-Ark’s valid quotation, constitute the exclusive and entire agreement between Sol-Ark and Customer regarding the purchase of any Sol-Ark Products and the use of software, including Firmware, and may not be amended, modified or changed except in a written document signed by Sol-Ark’s and the Customer’s authorized representatives as noted in the immediately following sentence. Except to the extent Customer has a written, signed, separate agreement with Sol-Ark governing the purchase and sale of Products and/or licensing of any software, including Firmware, that expressly indicates it is intended to supersede and replace these Terms (any such separate agreement, including any effective Distribution Agreement or Integrator Agreement between Sol-Ark and Customer, being referred to as a “Separate Customer Agreement”), these Terms supersede any previous or contemporaneous communications, representations or agreements, whether written or verbal, between the parties regarding the sale of Products and the license of any software, including Firmware. Sol-Ark’s acceptance of Customer’s order is conditioned upon Customer’s acceptance of these Terms regardless of the form and timing of Customer’s acceptance. Customer’s additional or different terms and conditions (whether communicated verbally or through email, text, social media, any other form of collaboration or interactive platform, communications network, workplace tool or otherwise) will not apply and are deemed fully and completely rejected by Sol-Ark. Customer’s receipt of Products and/or use of any software, including Firmware, constitutes Customer’s complete and unconditional acceptance of these Terms, except to the extent of any Separate Customer Agreement.

- “Sol-Ark” means Sol-Ark, LLC or an affiliate controlled by Sol-Ark that accepts the Customer’s order, as applicable, including any successors or assigns thereof.
- “Firmware” means computer programs and/or data structures embedded or running on a Product to enable its basic operation and updates, upgrades and documentation related thereto provided by Sol-Ark.
- “Product” means, as provided by Sol-Ark to Customer, any hardware product and its associated Firmware.
- “Force Majeure” means any act or occurrence that is beyond Sol-Ark’s reasonable control or that makes performance by Sol-Ark commercially impracticable or impossible, including, but not limited to, current or future pandemics or epidemics, fires, floods, earthquakes or other natural disasters, shortages of materials, labor disputes, wars or civil disturbances, declared acts of terrorism, disruptions of normal production, inadequate yield of Products despite reasonable efforts or an interruption of the means of transportation.

### **2. Orders.**

Customers may purchase Products by submitting a purchase order to Sol-Ark. No order will be binding on Sol-Ark unless and until Customer receives a written acknowledgment from Sol-Ark sent by electronic or other means confirming acceptance of the order or providing Customer with a scheduled delivery date.

Minimum order and packaging quantity requirements may apply as specified by Sol-Ark.

Unless otherwise expressly agreed in writing by Sol-Ark, Products purchased are only to be distributed by Sol-Ark’s authorized sales representatives or distributors. Customer will not purchase Products from any source other than Sol-Ark or a Sol-Ark authorized sales representative or distributor. Purchases made through non-authorized sales or marketing

channels are not covered by any warranty (and are not covered by Section 8 (Warranty) of these Terms) nor shall Sol-Ark have any liability, under any theory of recovery, to persons making purchases otherwise than through Sol-Ark or an authorized Sol-Ark sales representative or distributor.

### **3. Prices.**

Prices and currency are in United States Dollars (and all payments must be made in United States Dollars), unless otherwise expressly agreed and confirmed in writing by Sol-Ark and included in a valid quotation provided by Sol-Ark. Prices exclude delivery charges and are valid for the period indicated in a valid quotation (or thirty (30) days from the date of quotation if no period is included in the applicable quotation). Sol-Ark will separately invoice for any additional charges related to special delivery or shipping instructions agreed between the parties.

Prices exclude any sales, value added, withholding or other taxes, customs duties, tariffs or similar fees, which Customer shall pay in addition to the purchase price. If Sol-Ark, in its sole discretion, determines that Customer may be unable, is unlikely or is not required, to make any of the foregoing payments directly on its own behalf to any governmental authority, Sol-Ark may add the taxes, duties, fees and other charges (as determined by Sol-Ark) to the price to be paid by Customer. If Customer claims exemption from any tax, Customer must provide a certificate of exemption acceptable to Sol-Ark and the relevant taxing authority. Customer shall provide VAT-ID numbers to support VAT exemptions of intra-European community supplies. Customer shall notify Sol-Ark immediately if the VAT-ID number provided becomes invalid or is changed or amended. Sol-Ark reserves the right to retroactively charge VAT if VAT has been incorrectly exempted.

Sol-Ark may increase prices for Products scheduled for shipment upon written notice to Customer. Customer may reject any price increase in writing, and, if rejected in writing by Customer, Sol-Ark may, in its sole discretion, (a) cancel, and not deliver, without liability, penalty or further obligation to Customer, any orders for the affected Products or (b) deliver the affected Products to Customer at the original price quoted by Sol-Ark. If Sol-Ark does not receive a written rejection of a price increase within five (5) days after notifying Customer of the proposed price change, then, in such event, the proposed price increase will become effective, without further action or notice, on the first day immediately following such five (5) day notice period.

### **4. Delivery.**

Sol-Ark will seek to ship for Delivery on Sol-Ark’s confirmed delivery date (the “Delivery Date”). Unless otherwise specified in writing by Sol-Ark, “Delivery” is EXW Sol-Ark’s (or its designated contractor or agent) facility shipping point (Incoterms 2020). Sol-Ark may make partial deliveries, which may be separately invoiced. Delivery delay will not relieve the Customer of its obligation to pay for Products or to accept subsequent deliveries. If Sol-Ark cannot meet the Delivery Date, Customer and Sol-Ark may agree to alternative arrangements. In the absence of an agreement regarding alternative arrangements, Customer’s sole and exclusive remedy is to cancel any portion of an order that Sol-Ark cannot deliver in compliance with the Delivery Date, except that Customer may not cancel any order, or portion thereof, within thirty (30) days of any Delivery Date (and such cancellation shall operate as an unconditional waiver of any and all claims against Sol-Ark, whether in contract, tort or otherwise, with respect to cancelled Products and non-delivery). NOTWITHSTANDING ANYTHING TO THE CONTRARY, ALL CUSTOMER ORDERS FOR NON-STANDARD, SPECIAL OR CUSTOMIZED PRODUCTS ARE, IMMEDIATELY UPON ACCEPTANCE BY SOL-ARK, NON-CANCELLABLE AND NON-RETURNABLE FOR ANY REASON.

Any lead times or shipment dates (requested and/or quoted) provided by Sol-Ark are estimates; Sol-Ark does not guarantee lead times or shipment dates. Sol-Ark is, therefore, not liable for any loss, damage, costs or expenses, whether in contract, tort or otherwise, for any failure to deliver in accordance with the specified lead time or shipment date. Sol-Ark may deliver Products in installments. In the event that Sol-Ark’s ability to supply Product becomes constrained for any reason, whether through the occurrence of a Force Majeure event or otherwise, Sol-Ark may, as Sol-Ark deems reasonable and



in its sole discretion, reduce quantities or delay shipments to Customer and may allocate production and delivery among its customers as Sol-Ark deems appropriate and advisable in its sole discretion.

In the event of shipment errors, such as the wrong Product, inaccurate quantities, shipment to the wrong location or other errors, Customer must notify Sol-Ark of the purported error (with reasonable specificity) within thirty (30) days from invoice date. Sol-Ark will seek to verify the claim (and Customer shall fully cooperate in those efforts) and ship replacement parts or correct the error, as Sol-Ark deems appropriate and advisable in its sole discretion. If Product ordered by Customer is not standard product customarily carried in stock by Sol-Ark, then, in such event, (x) delivery of 90% or more of the quantities specified shall constitute fulfillment of the order and (y) Sol-Ark may deliver up to 110% of the order quantity, and, in the case of both clause (x) and (y), Sol-Ark shall adjust the invoiced charges to reflect the actual quantities shipped.

#### **5. Transfer of Title and Acceptance.**

Subject to Section 9 (Licenses), title and risk of loss and damage to Products passes to Customer upon Delivery at which time the Products are deemed fully and unconditionally accepted. Sol-Ark reserves, and Customer hereby grants to Sol-Ark, a purchase money security interest in all Products shipped to Customer (and all resulting proceeds from any sale by Customer of products or goods that include the Products) until Sol-Ark receives payment in full in cash for those Products and any related charges or account balances in Sol-Ark's favor, including subsequent claims. Sol-Ark may file a financing statement with appropriate authorities to perfect any security interest granted to Sol-Ark hereunder. At Sol-Ark's request, Customer shall promptly execute all documents necessary under the Uniform Commercial Code, or similar statutory provisions, to protect Sol-Ark's interest in the secured property and hereby irrevocably appoints Sol-Ark (which appointment is coupled with an interest) as Customer's attorney-in-fact for the express and limited purpose of executing such documents if Customer is unable or refuses timely and unconditionally to do so.

#### **6. Payment.**

Unless otherwise specified, upon Sol-Ark's credit approval (which may be withheld, conditioned or delayed by Sol-Ark, in its sole discretion, for any reason or for no reason), payment is due from Customer thirty (30) days from the applicable invoice date. Sol-Ark reserves the right to charge a fee on late payments calculated at the rate of two percent (2.0%) per month or the maximum amount allowable by law, whichever is less, unless agreed otherwise. Each shipment (including partial shipments) will constitute an independent transaction and will be separately invoiced. Customer shall pay for each transaction in accordance with the specified payment terms without regard to other shipments, deductions or setoff. Customer has no right of, and expressly waives, any right of setoff against Sol-Ark under these Terms and shall not, under any conditions, withhold payment of invoiced amounts. Sol-Ark may change credit or payment terms at any time in Sol-Ark's sole discretion. Sol-Ark may discontinue performance, and stop all shipments, if Customer fails to pay any sums when due (whether or not in dispute), or if Customer fails to cure any other breach of these Terms or any other Sol-Ark agreement within ten (10) days' after receipt of written notice of the breach. Customer shall promptly and unconditionally reimburse Sol-Ark, in cash, for any and all fees and expenses that Sol-Ark incurs in collecting outstanding amounts due from Customer hereunder or otherwise enforcing these Terms against Customer (including without limitation, attorneys' fees and expenses and court or similar costs).

#### **7. Rescheduled Delivery; No Returns.**

Customer may not cancel orders or Delivery of any Product, except as expressly permitted by Section 4 (Delivery) of these Terms. No reschedule of Delivery is allowed unless (x) Sol-Ark gives prior written permission (which Sol-Ark may or may not provide in its sole discretion, for any reason or for no reason) or (y) the scheduled Delivery Date occurs more than thirty (30) days after the date on which Customer makes the request and Customer has not requested more than two (2) rescheduled Deliveries within the prior 12 months (including the request then being made). Customers may not return Products, except as expressly permitted by Section 8 (Warranty) of these

Terms and applicable law.

#### **8. Warranty.**

Except as otherwise required by applicable Law, the sole and exclusive warranty provided to Customer shall be set forth in Sol-Ark's "Limited Warranty" included in Sol-Ark Product documentation and shall only apply to Products paid for by Customer and Products purchased by any customer directly from Customer (no warranty is provided by Sol-Ark under this Agreement for Products purchased by Customer from a source other than Sol-Ark). Any Sol-Ark warranty expressly excludes other communications, whether through email or otherwise, that may occur between or among employees of Sol-Ark and those of Customer in the ordinary course of business regarding Product performance. To obtain the benefits of any Warranty, Customer shall fully comply with Sol-Ark's policies and practices regarding the return of materials (including the completion and submission to Sol-Ark of any required Return Material Authorizations (RMAs)), and Sol-Ark shall have no obligation to provide Warranty coverage in the event of any failure to comply with those policies and practices.

Some Products may contain remanufactured parts. Unless Sol-Ark otherwise agrees in writing, Sol-Ark may, at any time and without notice, make process or materials changes affecting the performance or other characteristics of any Product. Product supplied after any changes will continue to meet Sol-Ark's published specifications, but may not be identical to Products supplied as samples or under prior orders. In addition to any limitations, qualifications and exclusions set forth in the "Limited Warranty" referred to in this Section 8, the Warranty set forth in this Section 8 does not apply to and Sol-Ark makes no warranty, express or implied, with respect to: defects resulting from improper or inadequate maintenance; use with third party supplied software or supplies; unauthorized alterations or modifications of any Products; improper use, handling or operation outside of published specifications or otherwise inconsistent with published Product manuals, including use under conditions for which the Product was not designed or use in an unsuitable environment; circumstances in which the original identification markings (including trademark or serial numbers) of Products have been defaced, altered or removed (other than as a result of normal wear and tear); improper installation; abuse (including electrostatic discharge), negligence, accident, loss or damage in transit; or unauthorized maintenance or repair (including repairs conducted by anyone other than Sol-Ark or any Sol-Ark authorized repair firm). Sol-Ark does not warrant that any software (including Firmware) is error free or that it will be free of vulnerability to intrusion or attack. In addition, Sol-Ark's Warranty as set forth in this Section 8 shall not be deemed modified or in any way enlarged or extended, and no obligation or liability shall arise out of Sol-Ark's provision of technical advice, facilities or other services in connection with any order submitted under this Agreement. Further warranty exclusions, limitations and qualifications may be set forth in Sol-Ark's "Limited Warranty" referred to in this Section 8, as in effect from time to time, or as otherwise expressly specified by Sol-Ark in any quotation, purchase order acceptance or separate written agreement executed by Sol-Ark.

PRODUCTS THAT ARE SAMPLES, PRE-PRODUCTION OR OTHERWISE NOT FINISHED ARE SOLD STRICTLY "AS IS." THE WARRANTY SET FORTH IN THIS SECTION 8 IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. EXCEPT FOR THE LIMITED WARRANTY STATED IN THIS SECTION 8, ALL WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, WITH RESPECT TO ANY PRODUCT, SOFTWARE, SERVICE, OR OTHER ITEMS DELIVERED UNDER THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

EXCEPT TO THE EXTENT OF ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, SOL-ARK EXPRESSLY DISCLAIMS, AND EXPRESSLY WAIVES, ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND WHATSOEVER WHETHER EXPRESS, IMPLIED, STATUTORY, ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR OTHERWISE, INCLUDING COMPLIANCE WITH MATERIALS DECLARATION REQUIREMENTS, ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE



OR INFRINGEMENT OR MISAPPROPRIATION OF ANY RIGHT, TITLE OR INTEREST OF ANY THIRD PARTY. NO ORAL OR WRITTEN STATEMENT OR REPRESENTATION BY DISTRIBUTOR, ITS AGENTS OR EMPLOYEES SHALL CONSTITUTE OR CREATE A WARRANTY OR EXPAND THE SCOPE OF ANY WARRANTY HEREUNDER.

For purposes of this Section 8 (Warranty), “Warranty Period” means the period of time beginning with shipment and continuing until the one (1) year anniversary of the shipment date. In the event that Sol-Ark confirms defects or non-conformance to published specifications during the Warranty Period, Sol-Ark will, at its sole and exclusive option, repair or replace the affected Products or refund the net purchase price of the affected Products.

#### **9. Licenses.**

Sol-Ark and its third party suppliers own and retain all rights, title and interest in and to the Firmware and any other software that may be made available by Sol-Ark (or any third party licensors) to a Customer. Third party suppliers may protect their rights in the Firmware and any other software in the event of any violation of applicable license terms. Firmware and any other software provided by Sol-Ark to Customer is licensed, not sold, and Sol-Ark (or its applicable licensors, if any) retains full and complete ownership of all Firmware or software licensed hereunder, and any copies thereof, in whole or in part, including all intellectual property rights (and all derivatives, enhancements or modifications thereof (and written feedback provided to Sol-Ark) as they relate to the Products, whether made or created by Sol-Ark, its third party suppliers or Customer) related to any of the foregoing.

Sol-Ark grants Customer a non-transferable, worldwide, non-exclusive limited license to use, perform, display, reproduce and distribute the Firmware or any other software in accordance with the documentation provided therewith and solely as incorporated and embedded into, or for use in connection with, Products (and not for use on a standalone basis or independent of Products purchased hereunder) directly, or through resellers by means of multiple tiers of distribution, to end users. Documentation provided with or for Firmware or any other software may include license terms provided by Sol-Ark and Sol-Ark’s third party suppliers, which will apply to the use of Firmware or any other software and take precedence over these license terms to the extent of any direct conflict. In the absence of documentation specifying the applicable license, Customer is granted the right to use one (1) copy of the applicable software on one (1) machine or instrument or as otherwise indicated on the quotation. Sol-Ark further grants to Customer a non-exclusive, worldwide, non-transferable license to sublicense to Customer’s resellers only its right to distribute the Firmware or other software as set forth above consistent with these Terms. The licenses granted in this Section 9 are subject to the restrictions set forth in these Terms.

Customer shall not distribute or disclose the Firmware or any other software, nor permit any reseller or third party to distribute or disclose the Firmware or any other software, except pursuant to an agreement with terms at least as protective as those set forth herein. The sale of any Product shall not in any way confer upon Customer, or upon anyone claiming under Customer, any license (expressly, by implication, by estoppel or otherwise) under any patent claim of Sol-Ark or others covering or relating to any combination, machine or process in which a Product is or might be used, or to any process or method of making a Product. Except and only to the extent as expressly permitted herein, or required by applicable law, Customer shall not and shall not permit any reseller or third party to: (a) reproduce the Firmware or any other software; (b) modify, incorporate into or with other software, or create a derivative work of any part of the Firmware or any other software; (c) reverse-engineer or disassemble any Product, Firmware or other software or decompile, disassemble, or otherwise attempt to derive the source code of the Firmware or any other software; (d) distribute, sublicense, lease, rent, loan or otherwise transfer Firmware or any other software to any third party; or (e) remove Firmware or any other software from any Product into which the Firmware or other software was incorporated or embedded.

Customer’s licenses under these Terms will terminate upon Customer’s breach of these license terms. Customer must destroy all copies of any Firmware or other software immediately upon termination and, if requested, provide a certificate of destruction to Sol-Ark.

If software or technical data is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government’s rights in the applicable software, technical data and accompanying documentation shall be only the customary commercial licenses provided to end user Customers as set forth in these Terms.

Customer will not remove any copyright notices, proprietary markings, trademarks or trade names from any Product. Customer shall reproduce Sol-Ark’s copyright notice and all other proprietary notices, including copies in machine-readable form. All copies of Firmware or other software (including any derivative works, enhancements, modifications or other changes) shall be and remain the sole and exclusive property of Sol-Ark or, if applicable, Sol-Ark’s licensor.

Customer shall not use the name Sol-Ark or any of Sol-Ark’s trademarks or service marks as part of its corporate or other legal name, or as part of the name under which it conducts business. In addition, Customer shall not have the right to use the Sol-Ark name, trademarks or service marks in any other way unless and until a separate Sol-Ark trademark license has been duly executed between Customer and Sol-Ark.

#### **10. Limitation of Liability.**

FOR PURPOSES OF THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 10, “SOL-ARK” INCLUDES SOL-ARK, ITS AFFILIATES, SUBSIDIARIES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ADVISORS, SUBCONTRACTORS AND SUPPLIERS OF EACH OF THEM.

SUBJECT TO APPLICABLE LAW AND NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS, IN NO EVENT WILL SOL-ARK BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DOWNTIME COSTS, LOSS OF DATA, RESTORATION COSTS, LOST PROFITS, OR COST OF COVER) REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, SOL-ARK’S LIABILITY TO CUSTOMER, WHETHER UNDER CLAIMS OF CONTRACT, TORT, WARRANTY, NEGLIGENCE OR OTHERWISE, IS LIMITED TO THE LESSER OF (i) THE AMOUNT ACTUALLY PAID BY CUSTOMER TO SOL-ARK FOR THE PRODUCT THAT IS THE SUBJECT OF SUCH DAMAGES, OR (ii) TEN THOUSAND UNITED STATES DOLLARS (\$10,000.00 USD). MULTIPLE CLAIMS SHALL NOT ENLARGE THIS LIMIT.

THIS SECTION 10 APPLIES WHETHER OR NOT DAMAGES WERE FORESEEABLE, EVEN IF SOL-ARK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED IN THESE TERMS. THE LIMITATIONS SET FORTH IN THIS SECTION 10 WILL NOT APPLY TO DAMAGES FOR BODILY INJURY OR DEATH PROXIMATELY CAUSED BY SOL-ARK, FOR WHICH CUSTOMER HAS THE RIGHT TO PROVEN DIRECT DAMAGES.

THE REMEDIES IN THESE TERMS ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES. UPON EXPIRATION OF THE WARRANTY PERIOD REFERRED TO IN SECTION 8 (WARRANTY) ALL LIABILITY OF SOL-ARK TO CUSTOMER IN RESPECT OF PRODUCTS PURCHASED HEREUNDER, WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, SHALL IMMEDIATELY AND WITHOUT FURTHER ACTION OR NOTICE TERMINATE.

#### **11. Confidentiality.**

In the course of business, Customer may obtain knowledge, or become aware, of information and data relating to Sol-Ark’s business, strategies, pricing, technologies, intellectual property and Products (“Sol-Ark Confidential Information”). Customer shall maintain all Sol-Ark Confidential Information in confidence, shall use the Sol-Ark Confidential Information solely in a





manner consistent with the purposes and intent of these Terms and shall not disclose the Sol-Ark Confidential Information to any person, except, in any case, as expressly permitted in writing by Sol-Ark. Customer shall, with respect to Sol-Ark Confidential Information, use the degree of care and skill that it uses to protect its own highly confidential information, but in no event less than reasonable care to prevent the disclosure or unauthorized use of Sol-Ark Confidential Information. Customer may disclose Sol-Ark Confidential Information which is required to be disclosed pursuant to a legally enforceable requirement of a government agency or court so long as Customer provides prompt written notice to Sol-Ark of that requirement prior to disclosure and cooperates with Sol-Ark, if requested, to limit or prevent disclosure. All Sol-Ark Confidential Information is and shall remain the sole and exclusive property of Sol-Ark (or any other person from which Sol-Ark may have received the same prior to disclosure to Customer). Upon Sol-Ark's written request, Customer shall immediately return to Sol-Ark, or permanently destroy, all Sol-Ark Confidential Information and all copies thereof (wherever stored, whether in the cloud, on a computer network, email system or other collaborative work platform and in whatever form of media).

## **12. End of Life.**

Sol-Ark may, without liability or penalty, terminate or discontinue manufacturing and production, at any time, of any Product, with or without prior notification. In the event of Product termination or discontinuance, Sol-Ark may, in its sole discretion and without obligation, offer Customer an opportunity to make a final Product purchase. If an offer for a final Product purchase is made by Sol-Ark, Sol-Ark must receive an order for the final purchase within any period specified by Sol-Ark, with shipment and payment terms as set forth and determined solely by Sol-Ark. PRODUCTS PURCHASED UNDER A FINAL OFFER ARE, IN ALL CASES, UPON ACCEPTANCE BY SOL-ARK, NON-CANCELLABLE AND NON-RETURNABLE FOR ANY REASON.

## **13. Miscellaneous.**

**Notices.** All notices required or permitted under these Terms shall be in writing and addressed to Sol-Ark and will be considered given when (i) delivered personally, (ii) sent by commercial overnight courier with written verification receipt, or (iii) three (3) days after having been sent, postage prepaid, by first class or certified mail.

**Force Majeure.** Sol-Ark will not be liable for performance delays or for non-performance due to any Force Majeure event, and Sol-Ark's performance will be excused for the entire period during which any Force Majeure event continues.

**Legal Compliance.** Customer shall comply with all applicable federal, state, local and foreign laws, regulations and ordinances. Sol-Ark may suspend performance if Customer is in violation of applicable laws, regulations or ordinances. Customer acknowledges that Products, software, including Firmware, and/or technical data and information (including data and information related to services and training) may be subject to export controls, including, but not limited to, export controls administered under the U.S. Export Administration Regulations (EAR). Customer shall be responsible for ensuring compliance with all applicable export laws and regulations relating to the export thereof, and shall not export or re-export any Products, software, including Firmware, or technical data or information (including data and information related to services and training) received from Sol-Ark in violation of any applicable law. Customer agrees that none of the foregoing Products, software, including Firmware, or technical data and information is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to prohibited or embargoed countries, nor be used for any prohibited end-use, such as nuclear activities, chemical/biological weapons, or missile projects, unless expressly authorized by the U.S. Government. If

requested by Sol-Ark, Customer shall provide to Sol-Ark any written assurances and other export-related documents as may be required to comply with U.S. export regulations or any other governmental regulatory agency requirements.

**Bankruptcy.** If Sol-Ark becomes aware that Customer has become insolvent, has become unable to pay its debts when due, files for bankruptcy, has become the subject of an involuntary bankruptcy, has a receiver appointed, or undertakes any process in which it intends to assign its assets for the benefit of creditors, then, in any such case, Sol-Ark may, in its sole discretion, without penalty, cancel pending Product orders, cancel unfulfilled obligations or request additional security, including the posting of a letter of credit or introduce requirements for prepayment or cash-on-delivery, to maintain Customer in good status.

**Governing Law and Attorneys' Fees.** These Terms shall be governed by and construed in accordance with the internal laws of the State of Texas, without regard to the principles of the conflict of laws thereof. Customer hereby expressly consents to the non-exclusive, personal jurisdiction and venue of the state and federal courts located in the county of Dallas, Texas for any action or matter arising from or related to these Terms. Notwithstanding any provision in these Terms, Sol-Ark or Customer may request any judicial, administrative, or other authority to order any provisional or interim measure, including injunctive relief, specific performance, or other equitable relief, prior to the institution of legal proceedings, or during the proceedings, for the preservation of its rights and interests or to enforce specific terms that are suitable for provisional remedies. These Terms shall not be subject to, or governed by, the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act, as enacted in any jurisdiction. The prevailing party shall be awarded its reasonable attorneys' fees and the reasonable costs and expenses incurred in any collection proceeding or action arising under, or related to the enforcement of, these Terms.

**Assignment; Waiver.** Customer shall not assign these Terms or any of its rights or delegate any of its duties under these Terms without the prior written consent of Sol-Ark (which may be withheld, delayed or conditioned in Sol-Ark's sole discretion). Subject to the foregoing, these Terms will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assigns. Any attempted assignment in violation of this Section 13 shall be null and void. Sol-Ark may, without notice or consent, assign these Terms to any affiliate or subsidiary. Neither party's failure nor delay to exercise any of its rights under these Terms will be deemed a waiver of forfeiture of those rights.

**Severability.** To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.

**Government Contracting.** Unless otherwise separately agreed in writing by Sol-Ark, no provision herein shall be deemed an acceptance of any provisions required in any U.S. Government contract or subcontract relating thereto ("Government Contract") nor shall any provision of any Government Contract become part of this Agreement, imposed upon or binding on Sol-Ark.

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