

SALE OF GOODS AND SERVICES TERMS AND CONDITIONS

1. AGREEMENT

- 1.1. Parties. The terms and conditions set forth below, together with those appearing in any attachments hereto, including an Invoice or Quotation (collectively "Terms"), constitute an agreement between HERZAN LLC ("HERZAN") and the party to whom this document is addressed ("Purchaser"). These Terms also apply to all future Goods and Services provided by HERZAN to Purchaser unless HERZAN gives written notice otherwise.
- 1.2. Precedence. In the event of a conflict between these Terms and any other written agreement between the parties and specifically covering the same goods or services, the terms and conditions of such agreement shall prevail to the extent of such conflict. A conflict between the terms set forth herein and those set forth in a Quotation or Invoice will be resolved in favor of the Invoice. Notwithstanding the above, these Terms shall prevail over any differing or additional terms and conditions proposed by Purchaser, including, without limitation, those contained in any invoice.
- 1.3. No Modification. No modification of these Terms shall be binding unless in writing and signed by an authorized representative of each party.

2. PRICES AND PAYMENT

- 2.1. Price. Purchaser shall buy from HERZAN the goods ("Goods") or services ("Services") shown in these Terms at the prices specified in a Quotation or Invoice.. Except as otherwise provided in these Terms, prices are exclusive of applicable freight charges, insurance and duties.
- 2.2. Taxes. Purchaser shall be responsible for any applicable sales taxes. Purchaser shall include such taxes with the payment or provide HERZAN with the appropriate information or documentation to support exemption from such taxes. HERZAN shall have no other or further liability to Purchaser with respect to any tax, duty, levy or like imposition for which Purchaser may be liable as a result of the supply of the Goods or Services.
- 2.3. Payment. Unless indicated otherwise on the face of these Terms, payment shall be due thirty (30) days after the shipment of Goods or performance of Services.

3. SHIPMENT AND DELIVERY

- 3.1. Shipment Terms. HERZAN shall ship Goods in the method identified by the Purchaser. In the case that no preferred shipping method is identified, it will be HERZAN's discretion to choose an appropriate carrier based on delivery requirements set by the Purchaser in its purchase order. Purchaser shall pay any resulting increase in the cost of freight. Except as specified below, shipments of Goods shall be Ex Works (as that term is defined in the Incoterms 2000 handbook)
- 3.2. Costs. Except as otherwise provided in these Terms, Purchaser shall bear all shipping and transport expenses. Purchaser shall bear all expenses related to handling, packing, packaging, loading and delivery of Goods to the designated carrier, and loading of Goods onto carrier's conveyance. In the case where shipping terms are prepay and add, a 20% surcharge will be added to shipping costs.
- 3.3. Damage to Packaging and Product. Purchaser shall be required to assert any claims for any loss or damage against the carrier involved. In each shipment, HERZAN shall include a packing list that contains the following: (a) the Invoice number; (b) the HERZAN part number; (c) the quantity shipped; and (d) the purchase order number. If there is any damage upon receipt,

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Purchaser shall make an exception at delivery describing damage on receipt. Purchaser is responsible for filing claims and/or providing evidence of shipping damage.

- 3.4. Delayed Shipment. If Purchaser requests a delayed delivery, Purchaser will be responsible for any storage fees incurred for holding shipment. No shipments will be delayed more than thirty days. Not later than the thirtieth day, the shipment will be released to Purchaser and shipped per 3.1.

4. CHANGES

- 4.1. Change or Cancellation. If Purchaser wishes to change or cancel any portion of the purchase order issued to HERZAN by the Purchaser, it may do so only with the written consent of HERZAN. Purchaser will be responsible for any fees and costs associated with any order change or cancellation. The time frame allowed for changes or cancellations: (a) for customized Goods or Services (i.e., supplied exclusively in accordance with HERZAN's designs or specifications), at least forty (40) calendar days prior to the Delivery Date; and (b) for all other Goods or Services, at any time prior to shipment.
- 4.2. Design or Specification Changes. HERZAN may, without any charge or liability, change, effective upon notice to Purchaser, HERZAN's designs or specifications at any time prior to shipment of corresponding Goods or receipt of corresponding Services. If any such change directly affects the prices or delivery schedules of Goods or Services, an equitable adjustment may be made. HERZAN can change design at any time without notification to Purchaser, as long as the changes do not affect form, fit or function.

5. QUALITY AND WARRANTY

- 5.1. Quality Control. HERZAN shall maintain an objective quality program for all Goods and Services in accordance with any general specification set forth in these Terms or otherwise supplied by HERZAN.
- 5.2. Conformance Defects and Liens. HERZAN warrants that all Goods and Services shall (a) conform strictly to the specifications, design criteria, descriptions, drawings, samples and other requirements described or referenced in these Terms; (b) be free from defects in design, materials and workmanship; and (c) be free of all liens, encumbrances and other claims against title.
- 5.3. Non-Infringement Warranty. HERZAN warrants that all Goods and Services do not and shall not infringe any patent, trademark, copyright, trade secret or other intellectual property right of a third party.
- 5.4. General Warranties. HERZAN warrants that all goods are fully functional and reflect accurately the description in these Terms.
- 5.5. Duration of Warranties. Warranties apply only where product is used for its intended purpose in compliance with all HERZAN directions and specifications. In this case the warranty is valid for one year from shipping date.

6. NONCOMPLYING GOODS AND SERVICES

- 6.1. HERZAN's Options. In addition to the remedies specified in Section 9 below, if any Goods or Service is defective in manufacturing or otherwise not in conformity with the requirements of these Terms ("Non-Complying Goods" and "Non-Complying Services", respectively), the Purchaser may return the Non-Complying Goods for repair, replacement or reworking at Purchaser's expense. Non-conforming items must be documented and possess a RMA (Return Material Authorization) before being returned to HERZAN. Purchaser is responsible for packing, shipping and insuring Goods when returned to HERZAN. HERZAN is not responsible for Non-Complying Goods due to mishandling, shipping damage or acts of nature.
- 6.2. Modifications to Installations. If the setup of mounting equipment is changed subsequent to an installation, re-installation costs will be the responsibility of the Purchaser. These costs include, but are not limited to, travel time, expenses, and installation fees.

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7. LICENSE

7.1 License. Each copy of the software must have its own (separate) license and be registered with HERZAN. Neither Purchaser nor any other person is permitted to make copies of the software without first purchasing the appropriate additional licenses. Individual software licenses are only valid when registered to a domain/url. This license does not grant any reseller privileges.

8. INDEMNIFICATION, INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

8.1 Intellectual Property in Results of Services

8.1.1 "Intellectual Property" or "IP" shall mean all inventions, patents (including, without limitation, applications divisions, reissues, reexaminations, terms, extensions, continuations, and any foreign counterparts), works of authorship, copyrights (including, without limitation, registrations, applications and derivatives), trademarks (including, without limitation, service marks, trade dress, and other marks identifying a party or its products), designs, processes, mask works, trade secrets, domain names, proprietary technical information, and other similar proprietary information, tangible and intangible, whether or not registered or registrable.

8.1.2 "Pre-existing IP" means IP conceived or developed prior to or independent of performance of this Invoice. Purchaser will retain full right, title and interest in and to any Pre-existing IP. Purchaser will not use any Pre-existing IP in connection with this Invoice without first obtaining from the owner any rights necessary to enable Purchaser to comply fully with these Terms.

8.1.3 Purchaser hereby agrees to and does irrevocably assign and transfer to HERZAN all of its worldwide IP in and to all results of the Services. At HERZAN's sole expense, Purchaser shall execute any documents and take all additional steps as reasonably requested by HERZAN to perfect, record, and register such assignment.

8.1.4 Purchaser hereby grants to HERZAN a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable license, with right to sublicense, any Pre-existing IP to the extent necessary for HERZAN's full enjoyment and commercial exploitation of the results of the Services as reasonably contemplated by these Terms.

8.1.5 Indemnification. Purchaser agrees to defend, indemnify and hold harmless HERZAN and its affiliates, subsidiaries, assigns, subcontractors and customers from and against all claims, losses, demands, fees, damages, liabilities, costs, expenses (including attorneys' fees), obligations, causes of action, suits or injuries of any kind or nature arising from, in connection with or related in any way to any breach or alleged breach of any of the warranties made by Purchaser or any act or omission of Purchaser in the performance of these Terms.

8.2. Removal of HERZAN's Trademarks. Unless otherwise specified or approved by HERZAN, Purchaser shall not remove HERZAN's name or any of HERZAN's trademarks, trade names, insignia, part numbers, symbols or decorative designs from any Goods rejected or returned by or to HERZAN or not sold or shipped to HERZAN.

8.3. Confidential Information. Except as required to supply Goods or Services pursuant to these Terms or as otherwise instructed by HERZAN, Purchaser shall not use or disclose any confidential information of HERZAN. Confidential information includes, without limitation, all information designated by HERZAN as confidential; all information or data concerning HERZAN's Goods (including the discovery, invention, research, improvement, development, manufacture or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods and processes); information obtained through access to any HERZAN information assets systems ("IA/S"), including but not limited to, computers, networks and voice mail; and any other information that is of such a nature that a reasonable person would believe it to be confidential.

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9. BREACH

9.1. Breach by Purchaser. If Purchaser breaches any provision of these Terms, HERZAN may terminate the whole or any part of these Terms, unless Purchaser cures the breach within ten (10) working days after receipt of HERZAN's notice of breach.

9.2 Definition of Breach. For purposes of section 9.1 above, the term "breach" shall, without limitation, include (a) any proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against Purchaser; (b) the appointment, with or without Purchaser's consent, of a receiver or an assignee for the benefit of creditors; (c) Purchaser's failure to provide HERZAN, upon request, with reasonable assurances of performance; or (d) any other failure by Purchaser to comply with these Terms.

9.3 Termination. In the event that HERZAN terminates these Terms in whole or in part as provided above, HERZAN may procure, upon such terms and in such manner as HERZAN deems appropriate, replacement goods or services, and Purchaser shall reimburse HERZAN upon demand for all additional costs incurred by HERZAN in purchasing such replacement goods or services.

9.4 Rights and Remedies. The rights and remedies granted to HERZAN pursuant to these Terms are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

10. IMPORT/EXPORT REQUIREMENTS

10.1. General Compliance. Purchaser shall comply with all applicable import and export requirements, and shall furnish to HERZAN, upon request, information or documentation of Purchaser's compliance, as well as any other information or documentation required to enable HERZAN to comply with such requirements applicable to its receipt of any Goods. Without limiting the generality of the foregoing sentence, Purchaser warrants the following:

10.1.1. Certification. Upon HERZAN's request, Purchaser shall provide HERZAN with an appropriate customs broker contact information and address, method of shipment, and Purchaser's account number.

10.2. Importer of Record. If any Goods are imported, Purchaser shall, whenever possible, allow HERZAN to be the importer of record, unless otherwise specified or approved by HERZAN. If HERZAN is not the importer of record and Purchaser obtains duty drawback rights to the Goods, Purchaser shall furnish to HERZAN, upon request, information and documentation required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to HERZAN.

11. MISCELLANEOUS

11.1. No Assignment. Purchaser shall not assign its rights or obligations without HERZAN's prior written consent. Any attempted delegation or assignment without such consent shall be void.

11.2. Waiver. The waiver of any term or condition of these Terms must be in writing. No such waiver shall be construed as a waiver of any other term or condition, nor as a waiver of any subsequent breach of the same term or condition.

11.3. Choice of Law. Without reference to any conflict of law provisions, these Terms shall be interpreted and governed by the laws of the State of California. Purchaser hereby consents to such choice of law.

11.4 Arbitration. Any controversy or claim arising out of or relating to the subject matter of these Terms or the breach thereof, other than any claim or controversy within the jurisdiction of the small claims court, shall be settled by binding arbitration before JAMS or the successor thereof according to its arbitration rules. If such organization or its successor does not exist when such controversy or claim arises, such controversy or claim shall be settled by binding arbitration before the American Arbitration Association according to its arbitration rules. The site of such arbitration shall be the office of the appropriate arbitration authority nearest HERZAN's principal office, unless otherwise agreed. HERZAN and Purchaser agree that neither of them shall be awarded any punitive or exemplary damages against the other.

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11.5 Attorney's Fees. Should any litigation or arbitration be commenced involving the rights or duties of either party in connection with the subject matter of these Terms, the prevailing party shall be entitled, in addition to any other relief, to recover costs and actual attorney's fees reasonably incurred, which fees and costs shall be awarded by the court or arbitrator as items of costs.

11.6. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, UNLESS EXPRESSLY PROVIDED OTHERWISE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY. NOTWITHSTANDING THE FOREGOING, PURCHASER SHALL BE RESPONSIBLE FOR ANY DAMAGES OF ANY KIND UNDER SECTIONS 8 AND 9 ABOVE AND FOR CLAIMS OF BODILY INJURY OR DEATH.

11.7. Non-Restrictive Relationship. Nothing in these Terms shall be construed to preclude HERZAN from producing, distributing or marketing the same or similar goods or services as the Goods or Services provided under these Terms to third parties or purchasing such same or similar goods or services from other third parties.

11.8. Severability. If a body of competent jurisdiction holds any term or provision of these Terms to be invalid or unenforceable, such term or provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of these Terms will remain in full force and effect.

11.9. Insurance. When provided Services from HERZAN, Purchaser will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect HERZAN in the event of such injury or damage, and will be in compliance with any and all laws, regulations or invoices. Purchaser further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Purchaser in the jurisdiction or jurisdictions in which Purchaser's operations take place.

11.10. Additional Provisions. The following clauses are incorporated by reference and are applicable to the extent required by the clause:

- (a) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2));
- (b) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246);
- (c) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212);
- (d) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793);
- (e) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351 et seq.);
- (f) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)); Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g));
- (g) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351 et seq.);
- (h) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) (41 U.S.C. 351 et seq.);
- (i) 52.222-54, Employment Eligibility Verification (Jan 2009);
- (j) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6;
- (k) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).