



Terms and Conditions

Unless otherwise specified by other written agreement of the parties, any purchase by Buyer from AWARE Monitoring Systems Inc. (or referenced as "AWARE") under this agreement shall be **(a)** a purchase of the equipment, components, and services and **(b)** a non-exclusive right to use all software incorporated therein solely in the product in which it was delivered, and will be subject to the following terms and conditions and with any additional terms and conditions of sale set forth in AWARE's proposal or purchase order, as applicable.

1. **Firm Orders.** Except in the case of a breach, as provided in Section 10, once an order is placed with and accepted by AWARE, it may be changed or cancelled only with the written consent of AWARE. Cancellations or modifications of delivery or performance schedules by the Buyer may result in pricing adjustments and or cancellation fees.
2. **Delivery.** All shipments shall be Ex Works from AWARE Monitoring Systems Manufacturing, Charlotte, NC, and Buyer shall be responsible for insurance, handling, customs clearance, and cost of delivery. Title and risk of loss shall transfer to Buyer upon delivery of goods to the carrier. Partial deliveries shall be permitted, but AWARE shall not ship excess quantities without the prior written consent of Buyer. AWARE will make every reasonable effort to complete shipment on or before the dates indicated set forth in a written quotation.
3. **Terms of Payment.** Buyer agrees to pay all amounts due in advance upon receipt of invoice [ACH, Check, Credit Card]. Federal, State and local government agencies agree to pay all amounts due within 30 days from the date of invoice.

In the event Buyer fails to make payment as required, Buyer agrees to indemnify and hold harmless AWARE from any and all reasonable cost and expenses, including attorneys' fees, court costs, related costs and costs of settlements, compromises and judgments arising there from, incurred by AWARE in the collection of any amounts due and enforcing its rights hereunder.

4. **Inspection and Testing.** All quality control exercised in the manufacture of the Products shall be in accordance with AWARE normal quality control policies, procedures and practices as set forth in our AWARE Electronics Manufacturing Policy.
5. **Packing, Marking, and Shipping.** Products shall be prepared, packed and shipped by or on behalf of AWARE in accordance with good commercial practices unless otherwise directed in the purchase order. A complete packing

list shall be enclosed with all shipments. The buyer agrees to reimburse AWARE for any costs for any non-standard packing, making or shipping directions contained in the purchase order.

6. **Warranty.** Unless Buyer has purchased an extended warranty (available only on certain items), AWARE warrants, for a period of 12 months, that the products manufactured and delivered hereunder will be free of manufacturing defects in materials and workmanship as specified by AWARE quality standards; provided any such product (i) has not been opened, altered or repaired other than with authorization from AWARE and by its approved procedures, (ii) not been subjected to misuse, improper handling or maintenance, negligence or accident or (iii) had its serial number or any part thereof altered, defaced or removed. In addition, AWARE shall extend to Buyer, on a 'pass through' basis, the manufacturer's warranty on purchased components to the extent permissible. The sole obligation of AWARE will be, in its sole discretion, to (1) repair or replace the defective product, or (2) accept the return of such product and credit Buyer's account for the full purchase price thereof the defective part. All items returned to customer will be at Buyer's expense. All defective items replaced pursuant to the above warranty become the property of AWARE. Any product repaired or replaced after the warranty period are warranted for the greater of (i) the balance of the original warranty period, or (ii) ninety (90) days from the date of shipment.

7. **Limitation of Liability.** THE FOREGOING WARRANTY IS IN LIEU OF AND BUYER WAIVES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE, AND SETS FORTH THE EXCLUSIVE AND ENTIRE LIABILITY OF AWARE WITH RESPECT TO ANY DEFECTIVE PRODUCT OR COMPONENT, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE OR OTHERWISE. IN NO EVENT SHALL AWARE BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES. This product is not intended for use as a fail-safe product and should not be used in any circumstance where a failure to function as specified could result in an injury to persons or property. The total liability of AWARE on any claim, arising out of or in connection with the performance or nonperformance of any products or services covered by this order shall not exceed the price allocable to the product or service which gives rise to the claim. Except as to title, any such liability shall terminate upon the expiration of the warranty period. In no event shall AWARE be liable for claims related to or arising out of death, disability, or property damage, except as otherwise provided at law. BUYER, IN ITS AGREEMENTS WITH ITS CUSTOMERS, SHALL

CAUSE ANY LIABILITY OF AWARE TO ANY SUCH THIRD PARTIES TO BE LIMITED AS PROVIDED HEREIN.

8. **Returns.** All shipments shall be deemed accepted by the Buyer, and Buyer waives the right of rejection, unless AWARE receives a notice of rejection within 10 days following delivery, or such other period agreed in writing in advance by the parties. No return of products will be accepted by AWARE without a Return Material Authorization Number (RMA Number) obtained from AWARE. All returned products must be shipped prepaid, clearly marked RMA number, and be accompanied by a complete description of the nature of the defect.
9. **Intellectual Property.** All Products purchased by Buyer pursuant hereto contain proprietary intellectual property of AWARE. The rights granted hereunder, or use of AWARE products does not convey any rights or ownership in AWARE patents, copyrights, trademarks, intellectual property or know-how. Buyer agrees not to directly or indirectly (i) use such Products as a replication master, copy (except for archival purposes), reverse engineer, alter, decompile, disassemble or otherwise seek to discover design information or source code; or (ii) attempt to modify or remove, efface or obscure any Intellectual Property Rights notices. Buyer acknowledges that all software furnished hereunder, and the contents thereof are the proprietary property of AWARE, and Buyer has no right or interest in said software except the nonexclusive right to use it in the product in which it was delivered.
10. **Use of Data.**
 - a. AWARE reserves the right to use node flood/weather data and API data in furtherance of climate monitoring both nationally and world-wide for use by governmental entities and private parties.
 - b. AWARE reserves the right to use API data for both research and development purposes for AWARE, other US governmental partners and universities.
 - c. Customer data stored on AWARE servers is the property of AWARE Monitoring Systems however, the customer has a non-exclusive right to use, download, publish and make available to the public said customers data at any time, so long as said customer is subscribed to the AWARE software platform, storage costs and API charges.
11. **Remedies for Breach**
 - a. By AWARE: If AWARE Monitoring Systems Inc. shall be in material breach of this agreement, Buyer may cancel the undelivered portion of purchase orders upon 30 days written notice unless AWARE cures such breach with such notice period. Any money paid in advance by the Buyer to AWARE for goods not shipped will be promptly reimbursed. The foregoing shall be the exclusive remedy of Buyer for any

of AWARE's breach of this agreement.

b. By Buyer: If Buyer shall be in material breach of this agreement and fails to cure said breach within 30 days of written notice thereof from AWARE Monitoring Systems Inc., AWARE shall thereupon have the right without further notice to (1) bill and declare due and payable the aggregate purchase price for all undelivered products under this agreement, (2) defer shipment hereunder and under any other agreement until such default, breach or repudiation is removed, and/or (3) cancel the undelivered portion of this and/or any other agreement in whole or in part, without prejudice to any other remedies AWARE may have. Further, if Buyer fails to pay any amount hereunder as it becomes due or wrongfully rejects goods hereunder, AWARE shall also have the right to recover, in addition to the purchase price of such goods, all costs incurred by AWARE to collect the same.

12. General

- a. Force Majeure.** AWARE shall not be liable for delay in performance or inability to perform occasioned by acts beyond its reasonable control, including acts of God, fire, flood, strike, war, embargo, government regulation or materials shortage. If performance is delayed by such an event, AWARE shall notify Buyer, and time of performance shall be extended for the period of such contingency. If any delay extends for more than ninety (90) days, either party, upon thirty (30) days written notice may terminate the order in respect to the unexecuted portion of the work where upon Buyer shall promptly pay AWARE for the work performed prior to cancellation.
- b. Notices.** Any notice required or permitted to be sent under this order shall be delivered by mail, return receipt requested, or via an international courier service (e.g. FedEx, DHL, UPS, etc.) to the addresses of the parties set forth in this order. Notice, so sent will be deemed effective three days following deposit in the mail, proper first-class postage prepaid or one day following delivery to an international courier, prepaid for overnight delivery.
- c. Entire Agreement.** This document and attached proposal contain the entire agreement between Buyer and AWARE Monitoring Systems Inc. and supersedes any prior or contemporaneous oral or written agreements or communications between them relating to the subject matter hereof. No printed terms in any document of Buyer shall apply to the products delivered under this agreement nor shall they be binding on AWARE. No delay or omission to exercise any right, power, or remedy upon a breach or default under this agreement shall impair any such right, power, or remedy of the non-defaulting party or be construed as a waiver of any such breach or default. In the event that any provisions in this agreement, for any reason,



shall be held void or unenforceable, the remaining provisions shall remain in full force and effect and shall control.

d. Governing Law. All orders shall be governed by and construed under the laws of the State of North Carolina and shall be subject to the exclusive jurisdiction of the courts in Mecklenburg County, North Carolina. In any action brought to enforce this agreement, the prevailing party shall be entitled to also recover the cost of enforcement, including attorney fees related thereto.

The above terms and conditions are accepted:

Signature: Name Date

Agency/Company Name