

**GPS INTERNATIONAL TECHNOLOGIES, INC.**  
**TERMS AND CONDITIONS OF SALE**

1. **Definitions.** “**Seller**” is GPS International Technologies, Inc., and “**Buyer**” is the individual or entity issuing an order for any product sold hereunder (“**Product**”). “**Agreement**” collectively means these terms and conditions of sale and each order accepted by Seller in writing or by performance (“**Order**”). “**Software**” refers to the object code version of software embedded in the Product or otherwise made available by Seller to Buyer, and expressly excludes all source code. “**Intellectual Property Rights**” collectively means any and all patents, copyrights, trademarks, trade secrets, mask works, moral rights, know-how or any other proprietary right, and any applications for the foregoing, under the laws of the United States or any other jurisdiction. “**Including**” means “including without limitation.” “**Days**” means “calendar days,” unless otherwise stated. All definitions in this Agreement apply to both their singular and plural forms, as the context may require.

2. **Acceptance.** EXCEPT FOR (i) QUANTITY AND (ii) REQUESTED DELIVERY TERMS THAT ARE PART OF AN ACCEPTED ORDER, NO OTHER TERM WHICH DIFFERS FROM OR ADDS TO THESE TERMS AND CONDITIONS SHALL BE BINDING UPON SELLER. ONLY ACCEPTED ORDERS SHALL BE BINDING UPON SELLER. Retention by Buyer for over fifteen (15) days of any Product delivered by Seller shall be conclusively deemed acceptance of such Product by Buyer. This Agreement constitutes the sole, final and entire agreement between Seller and Buyer and supersedes all other agreements between them regarding the subject matter hereof.

3. **Changes and Cancellation.** Buyer shall have the right, within no less than one (1) week before any scheduled Product shipment, to change applicable Product quantities, delivery schedules, and methods of shipment and packaging. If such changes affect the cost or time required for performance, Seller shall so notify Buyer, and a payment adjustment for the affected Product shipment shall be made as reasonably determined by Seller. Accepted Orders may not be cancelled except upon Seller’s written approval, which shall be subject to Buyer’s payment of Seller’s reasonable cancellation or restocking charges. No modification of the Agreement shall be binding upon Seller unless it is in writing and signed by Seller.

4. **Warranty and Remedies**

(A) Each Product is subject to the warranty that accompanies the Product packaging (the “**Limited Warranty**”), an advance copy of which will be supplied to Buyer upon request.

(B) EXCEPT FOR THE LIMITED WARRANTY, TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, SELLER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE) IN

CONNECTION WITH ANY PRODUCT. Seller assumes no liability for faulty or improper application or use of any Products or use thereof with any other product.

(C) All warranty claims must be made in writing to Seller during the applicable warranty period and the Products claimed defective must be returned by Buyer to Seller at Seller’s plant. All Products returned for warranty must be accompanied by a written explanation of the failure. Seller will repair, or at its option, replace any defective Products and return the repaired or replacement Products to Buyer without charge. SUCH REPAIR OR REPLACEMENT IS BUYER’S ONLY REMEDY AND SELLER’S ONLY LIABILITY AND OBLIGATION FOR BREACH OF WARRANTY HEREUNDER. SELLER’S WARRANTIES SHALL NOT BE ENLARGED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY SHALL ARISE OUT OF SELLER’S ADVICE OR SERVICE IN CONNECTION WITH, ANY ORDER OR PRODUCT.

(D) NOTWITHSTANDING ANYTHING ELSE HEREIN, SELLER WILL NOT BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH ANY PRODUCT, UNDER ANY LEGAL OR EQUITABLE THEORY, WHETHER IN CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE OR STRICT LIABILITY): (I) FOR ANY AMOUNT EXCEEDING THE AMOUNT PAID BY BUYER TO SELLER FOR THE PRODUCT GIVING RISE TO SUCH LIABILITY; (II) FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR (III) ANY LOSS OF DATA, LOSS OF USE OF COMPUTER NETWORKS, LOST PROFITS, LOST OPPORTUNITY OR LOST REVENUE, WHETHER CHARACTERIZED AS DIRECT DAMAGES OR OTHERWISE.

(E) BECAUSE SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE EXCLUSION OR LIMITATION OF WARRANTY OR LIABILITY, SECTIONS 4(B), (C) OR (D) MAY NOT PARTIALLY OR ENTIRELY APPLY TO BUYER. TO THE EXTENT THAT ANY SUCH LIMITATION OR EXCLUSION OF LIABILITY OR WARRANTY IS CIRCUMSCRIBED, IT SHALL BE LIMITED TO THE LEAST EXTENT POSSIBLE UNDER APPLICABLE LAW.

5. **Title and Delivery.** Products shall be delivered FCA (Incoterms 2000) Seller’s facility, Bonita, California, USA, unless otherwise notified in writing by Seller. Title and liability for loss or damage shall pass to Buyer upon Seller’s tender of the Products to a carrier for shipment to Buyer. If loss or damage occurs during shipment, Buyer shall not be relieved of obligation to pay costs of insurance, transportation, import duties, taxes or any other expenses incurred for licenses or clearances required at port of entry and destination. Seller shall retain a security interest in the Products until receipt of payment in full from Buyer. Seller shall use commercially reasonable efforts to meet Buyer’s requested delivery schedule. However, Seller shall not be liable for any delay in delivery.

6. **Indemnity.** Buyer shall defend, indemnify and hold harmless Seller (including its officers, directors, employees and agents) (collectively, the “**Seller**”

**Indemnitees**) from and against any and all governmental fines or penalties, or third party claims (including for property damages, personal injury or death), and resulting damages, liabilities, penalties, costs or expenses, including attorney's fees, which may be sustained by any Seller Indemnitee and arise out of or in connection with (i) any breach by Buyer of the Agreement, (ii) the use, marketing, advertising or sale of any Product in contravention of this Agreement or the Product's intended purpose, or any use restrictions included with or displayed on such Product's packaging, or (iii) Buyer's or its customers' violation of any applicable law, regulation or third party's rights.

7. **Terms and Method of Payment.** All payments to Seller shall be made solely in US dollars in immediately available funds. Payment shall be due upon receipt of invoice. If payment is not received by Seller within thirty (30) days following invoice date, the late payment will accrue interest from the date due until the date paid at a rate of one and one half percent (1.5%) per month, or the maximum rate allowed under applicable law, whichever is less, on the unpaid balance. If in the judgment of Seller the financial condition of Buyer, at any time, does not justify continuance of production or shipment on the terms of payment specified, Seller may require full or partial payment of any completed delivery prior to delivery of any subsequent Orders.

8. **Taxes.** Seller's prices are exclusive of all taxes. Responsibility for all customs duties, charges, sales tax, value-added tax, and any other taxes imposed by any taxing authority on the sale or use of any of the products purchased (excluding any taxes solely on Seller's income) shall be borne solely by Buyer.

9. **Compliance with Law.** Buyer represents, warrants and covenants that, at all times, Buyer's use, distribution, sale, marketing, advertising, import and export of all Products will comply with all applicable law, rules, regulations and industry standards of the United States and of any other applicable jurisdiction, including privacy and data protection laws, the U.S. Foreign Corrupt Practices Act, and export laws, restrictions, and regulations. Buyer will not export or re-export, or authorize the export or re-export of any Product, technology or information it obtains from Seller (or any direct product thereof) in violation of any such laws, restrictions or regulations. Buyer shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to the export from the USA of the Products, or the import of the Products to any location in compliance with all applicable laws and regulations.

10. **Intellectual Property Ownership.** Buyer acknowledges that the Products incorporate Software and other technology that are subject to Seller's Intellectual Property Rights, and that such Software and other technology is not sold to Buyer and is only licensed to Buyer for use solely as incorporated and/or embedded into the Product. Other than the foregoing license, Seller or its licensors shall retain all Intellectual Property Rights and interests in and to or underlying the Products, and nothing in this Agreement shall be construed to grant Buyer a license of any kind to any Intellectual Property Rights of Seller. To the maximum extent allowable under applicable law, Buyer agrees that it shall not, directly or indirectly through any third

party, reverse engineer, decompile, duplicate or translate any Product or Software, or seek to reveal the trade secret or know how underlying any Product or Software.

11. **Intended Use.** BUYER ACKNOWLEDGES THAT PRODUCTS SOLD BY SELLER ARE NOT INTENDED FOR USE IN ANY SITUATION WHERE PRODUCT FAILURE COULD LEAD TO PERSONAL INJURY, LOSS OF LIFE OR PROPERTY DAMAGE.

12. **Miscellaneous.** Failure by Seller to insist upon performance of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the right of Seller thereafter to enforce each and every provision hereof. Any detention, demurrage, storage or auxiliary charges assessed by carriers or warehousemen resulting from Buyer's requirement for special service or Buyer's failure to accept delivery in a timely manner shall be paid by Buyer. This Agreement and all disputes arising out of or related to this Agreement shall be solely and exclusively construed and governed in accordance with the laws of the State of California, USA, without application of any law that would result in the application of a different body of law. The UN Convention on Contracts for the International Sale of Goods is hereby expressly excluded and shall not apply to this Agreement. Any and all suits hereunder shall be brought and resolved solely and exclusively in, and the parties hereby irrevocably consent to the exclusive jurisdiction and proper venue of, the state and federal courts located in the County of San Diego, State of California, USA, and waive any objections thereto based on any ground including improper venue or forum non-conveniens. Notwithstanding the foregoing, Seller shall have the right: (i) to enforce judgments; or (ii) seek injunctive relief for an infringement or threatened infringement of its Intellectual Property Rights, in any court of competent jurisdiction, no matter where located. Buyer may not assign or delegate this Agreement without the prior, express written consent of Seller. Seller may freely assign or delegate this Agreement without Buyer's consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Any notice to be given hereunder by either party to the other shall be in English and in writing, and shall be hand delivered or sent by overnight courier or registered, express mail to the addresses listed on the Order, and shall be deemed to be effective two (2) business days after dispatch. If any provision in this Agreement is ruled entirely or partly invalid or unenforceable, then (i) all remaining provisions shall remain unaffected; and (ii) the provision(s) held wholly or partly invalid or unenforceable shall be deemed amended, and the parties shall reform the provision(s) to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein. Any rights to accrued payments and Sections 1, 2, 4, 6, 7, 8, 9, 10, 11 and 12 shall survive the termination or expiration of this Agreement.