

**wtec, INC.**  
**TERMS AND CONDITIONS OF SALE**

**1. TERMS OF SALE. THE TERMS AND CONDITIONS OF SALE ("Terms") CONTAINED HEREIN APPLY TO ALL QUOTATIONS MADE AND CUSTOMER PURCHASE ORDERS ENTERED INTO BY wtec, INC. AS SELLER ("wtec"), AND [INSERT CUSTOMER NAME] ("Buyer"). wtec's ACCEPTANCE IS CONDITIONAL ON BUYER'S CONSENT TO THESE TERMS. TO THE EXTENT OF ANY CONFLICT BETWEEN THESE TERMS AND ANY PURCHASE ORDER TERMS OR OTHER TERMS AND CONDITIONS CONTAINED IN BUYER'S COMMUNICATIONS WITH wtec, THESE TERMS SHALL TAKE PRECEDENCE OVER BUYER'S TERMS OR CONDITIONS, AND ANY INCONSISTENT OR ADDITIONAL TERMS AND CONDITIONS CONTAINED IN ANY COMMUNICATION FROM BUYER ARE HEREBY REJECTED. ANY CHANGES IN THE TERMS CONTAINED HEREIN MUST SPECIFICALLY BE AGREED TO IN WRITING BY wtec BEFORE BECOMING BINDING ON EITHER wtec OR THE BUYER. IN THE ABSENCE OF WRITTEN ACCEPTANCE OF THESE TERMS, ACCEPTANCE OF OR PAYMENT FOR wtec's PRODUCTS SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS.**

**2. ORDERS.**

(a) Each purchase order shall include: (i) the Buyer's order number; (ii) identification of the products ordered by Buyer and corresponding wtec part number; (iii) the requested delivery date; (iv) any shipping instructions, including preferred carrier and shipping destination (complete address); (v) the list price of products ordered; (vi) the billing location (complete address); and (vii) Buyer's tax status (exempt or non-exempt). wtec's standard order acceptance process is to acknowledge acceptance or propose modifications to orders within five (5) business days of receipt (any order not accepted within ten (10) business days is deemed rejected). All order acknowledgements accepting an order will set forth wtec delivery dates. The confirmation of any order by wtec to Buyer means that the terms of the order have been agreed and wtec accepts the order and the terms of such order, though only to the extent consistent with the terms of these Terms. Once accepted by wtec, the Buyer's purchase order is non-cancellable, unless otherwise approved by wtec. These terms shall be applicable whether or not they are attached or enclosed with the products to be sold and licensed hereunder. No shipments will be made until a signed Purchase Order accepting these Terms is received by wtec.

(b) wtec reserves the right to cancel all or part of any order accepted if bankruptcy proceedings are initiated by or against Buyer. Unless specifically otherwise agreed in writing by wtec, Buyer acknowledges that products sold by wtec are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure could lead to loss of life or catastrophic property damage. Buyer will indemnify and hold wtec harmless from any loss, cost or damage

resulting from Buyer's breach of the provisions of this Section 2(b).

**3. TAXES.** Unless otherwise specifically provided herein, Buyer will pay all applicable present or future sales, revenue, use, excise, VAT, import or other taxes in addition to the purchase price of the products unless the Buyer provides wtec with a tax exemption certificate thereafter. If wtec pays any such tax, fee or charge, the Buyer shall reimburse wtec therefore.

**4. SHIPMENT.** Unless otherwise specified on the face thereof, shipment of products within and outside the U.S. shall be delivered CIP (Incoterms 2010) to the location specified by the purchase order. Title and liability for loss or damage thereto shall pass to Buyer upon delivery by wtec's carrier at the location specified by the purchase order, and any loss or damage thereafter shall not relieve Buyer of any obligation hereunder. All products shall be deemed irrevocably accepted upon delivery. Buyer shall reimburse wtec for taxes and any other expenses incurred for licenses or clearance required at port of entry and destination. wtec may deliver the products in installments. Unless otherwise agreed, all items shall be packaged and packed in accordance with wtec's best practices. Buyer shall reimburse wtec the per unit carriage and insurance amount attributable to each product. wtec does not and will not guarantee any shipping or delivery date, and no person is authorized to commit to a delivery date except in a writing signed by an authorized officer of wtec. wtec may estimate shipping or delivery dates to the best of wtec's knowledge based on information provided by Buyer and conditions existing at the time of the estimate. wtec shall not be liable for any delay or failure to perform due to any cause beyond its control. Causes include, but are not limited to, strikes, acts of God, acts of the Buyer, interruptions of transportation or inability to obtain necessary labor, materials, or facilities. The delivery schedule shall be considered extended by a period of time equal to the time lost because of any excusable delay. In the event wtec is unable to wholly or partially perform for a period of more than sixty (60) days because of any cause beyond its control, wtec may terminate the order without any liability to Buyer. wtec may at its sole discretion allocate production and delivery among wtec's customers. No reschedules are permitted without wtec's prior written consent on a case-by-case basis. Unless otherwise agreed and confirmed in writing, items scheduled for shipment are not subject to revision, reschedule or termination within sixty (60) days prior to shipment. In any event, any warehousing, freight, insurance and other costs incurred by wtec in honoring Buyer's request for a shipment delay are to be borne by Buyer.

**5. PRICE; PAYMENT.**

(a) wtec reserves the right at any time to revoke any credit extended to Buyer or cancel Buyer's order because of Buyer's failure to pay for any products when due or for any reason deemed good and sufficient by wtec and in such event all subsequent shipments shall be suspended until Buyer's account is current or

so declared or cancelled at wtec's option. If wtec cancels Buyer's order due to Buyer's non-performance, wtec shall invoice Buyer for the price effect applicable to the quantity actually purchased. wtec reserves the right to adjust its prices to reflect changing economic conditions.

(b) Unless otherwise agreed, all invoices are due and payable thirty (30) days from the date of invoice without set off or deduction.

(c) Each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly. Products held for the Buyer shall be at the risk and expense of the Buyer.

(d) Unless otherwise specified by wtec in its order acknowledgment accepting Buyer's order, Buyer grants and wtec retains a purchase money security interest in each product furnished hereunder and any proceeds thereof, until the full purchase price thereof shall have been paid in full.

## 6. LIMITED WARRANTY.

(a) Limited Warranty. For a period of one (1) year from the date of original shipment from wtec's facility, wtec warrants that the Covered Product will be free from defects in materials or workmanship arising under proper and normal use. This warranty shall apply only to the Covered Products and shall not apply to any other goods or materials, parts or components of a system or any system as a whole. wtec does not warrant any products manufactured by third parties; provided that wtec will, to the extent permitted by the manufacturer, assign third-party warranties to Buyer (the warranty set forth in this Section, the "Warranty.") "Covered Product" shall mean a product purchased by Buyer pursuant to these Terms.

(b) Process. Prior to making any claim under the Warranty, Buyer shall contact wtec and (i) notify wtec of the defect in the applicable Covered Product; (ii) provide the applicable Covered Product serial number to wtec; and (iii) request an RMA number from wtec. If wtec determines that such Covered Product is eligible for the Warranty, wtec shall provide Buyer with an RMA number and Buyer shall include such RMA number on the shipping package for a returned Covered Product. Buyer shall be responsible for all shipping costs associated with returning a Covered Product under the Warranty to wtec and wtec shall be responsible for all shipping costs associated with shipping a repaired Covered Product or replacement Covered Product to Buyer. wtec will not accept a return of a Covered Product without an associated RMA number. Unless repaired, all defective Covered Products become the property of wtec, and Buyer hereby assigns all right, title, and interest in and to such defective Covered Products to wtec.

(c) Inspection. If Buyer claims that any Covered Products are defective in materials or workmanship, wtec shall have the right to either examine the Covered Products where they are located or, in its sole discretion, issue shipping instructions for return of the Covered Products. Buyer shall prepay all transportation charges for such return.

(d) Remedies. wtec's sole and exclusive obligation and Buyer's sole and exclusive remedy under the Warranty is wtec's repair or replacement of the defective Covered Product or a credit for the purchase price of the defective Covered Product. wtec shall have sole discretion as to which of these remedies wtec will provide. wtec is not liable for any repair or maintenance costs incurred by Buyer, unless wtec authorizes such charges in writing in advance of the commencement of the work. If wtec elects to replace or repair the defective Covered Product, the replaced or repaired Covered Product will be warranted for the remainder of the warranty term applicable to the originally shipped Covered Product, but the Warranty shall not be extended beyond its original term.

(e) Notice and Waiver. If Buyer discovers any defect in materials or workmanship in the Covered Product, Buyer must notify wtec of the claimed defect on or before the tenth (10th) day after the date on which Buyer discovers the claimed defect. FAILURE TO GIVE TIMELY NOTICE OF A CLAIM UNDER THE WARRANTY SHALL RESULT IN BUYER'S WAIVER OF SUCH CLAIM.

(f) Transfer of Ownership. The Warranty is not transferable unless Buyer is expressly authorized by wtec in writing to resell the Covered Products. In addition, Buyer must notify wtec on or before the fifteenth (15th) day after the date on which it transfers ownership of the warranted Covered Product. Any transfers in violation of this Section shall invalidate the Warranty. Notice of the transfer of ownership must be in writing and shall include the name and address of the new owner.

(g) Exclusions from Warranty. The Warranty shall not apply to normal wear and tear of the Covered Products and shall not apply to any cable markings or defects attributable to: (i) improper installation; (ii) misapplication of parts; (iii) chain or system failures induced by other products or components; (iv) lack of proper inspection or maintenance; (v) ordinary wear and tear; materials, components or products manufactured by a third party; (vi) power surges, severe weather conditions or acts of nature, including but not limited to lightning or floods; (vii) usage or operation not in accordance with published ratings, specifications or instructions, including but not limited to environmental specifications identified by wtec; (viii) any adjustment, modification, alteration or repair not expressly authorized by wtec; (ix) misuse, abuse or neglect of the Covered Product or of any system of which the warranted Covered Product is a part; (x) any type of aesthetic changes due to oxidation or corrosion occurring on stainless steel or galvanized steel parts installed in unusually corrosive marine and industrial atmospheres (in which case wtec's only obligation shall be to ensure that Covered Products comply with wtec's published material specifications); or (xi) accidental damage.

(h) **DISCLAIMER OF WARRANTY.** EXCEPT AS SET FORTH HEREIN, THIS WARRANTY EXTENDS TO BUYER ONLY AND IS IN LIEU OF, AND wtec EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

**This Warranty shall not be enlarged, and no obligation or liability shall arise out of wtec's rendering of technical advice, facilities or services in connection with the delivery of the products.**

**7. OEM PRODUCTS.** Buyer hereby agrees and certifies it will integrate all products purchased under OEM terms from wtec into Buyer's products that it assembles or manufactures in its regular course of business. Buyer expressly agrees not to resell any OEM products as standalone units and any attempt to do so, without wtec's prior written permission, shall be a material breach of this Agreement. Additionally, Buyer certifies it has in good faith represented to wtec its business model, which wtec has relied upon in issuing OEM pricing to Buyer.

**8. SOFTWARE LICENSE; SOFTWARE OWNERSHIP.** The products being purchased may incorporate software or firmware owned by wtec. Notwithstanding any other provision of these Terms and Conditions, this software and/or firmware is and shall remain the property of wtec, subject to a license to the Buyer of the software and/or firmware according to the following terms:

(a) Subject to the terms and conditions of this Agreement, wtec grants Buyer a limited, non-exclusive, non-transferable, royalty-free license, without the right to sublicense, to execute the software and/or firmware only as incorporated into the hardware products sold by wtec for the operation of only wtec products. Subject to the terms and conditions of this Agreement, to the extent that Buyer is an authorized distributor of wtec, wtec grants Buyer a limited, non-exclusive, non-transferable, royalty-free license, without the right to sublicense, to offer to sell and sell the products purchased from wtec and to distribute the software and/or firmware solely as incorporated therein for the operation of only wtec products.

(b) Except as provided for in 17 U.S.C. §117, Buyer agrees it will not reproduce said software and/or firmware in any form, including, but not limited to, reproducing software and/or firmware for any other of wtec's articles owned by Buyer.

(c) Except as provided herein, Buyer agrees that it shall not disclose the contents of the software and/or firmware in any form to others. Buyer agrees that it will not attempt to reverse engineer, disassemble or de-compile said software and/or firmware. Buyer may not modify, create derivative works or otherwise change the software and/or firmware.

**9. NO LICENSE BY IMPLICATION; EQUIPMENT OWNERSHIP.** The sale of the products furnished hereunder does not convey any license by implication, estoppel, or otherwise, under any proprietary or patent rights of wtec covering combinations of the products with other elements or improvements. In all cases, intellectual property rights in, and all technology relating to the products, including but not limited to, their design and all improvements thereto, shall be and remain the exclusive property of wtec and its licensors or suppliers.

**10. GOVERNMENT CONTRACTS.** If Buyer's order is placed under a contract with the United States Government, wtec agrees to comply with those contract provisions and

regulations with which, pursuant to law, it must comply and of which Buyer has, at the time of order placement, placed wtec on notice. All rights in technical data, software and/or firmware owned or licensed by wtec are hereby reserved and deemed restricted or limited. No provision of Buyer's contract with the government will be binding on wtec except as expressly set forth in this paragraph.

**11. DAMAGE LIMITATION.** IN NO EVENT SHALL wtec BE LIABLE TO BUYER, OR TO ANY PARTY CLAIMING THROUGH OR UNDER BUYER, FOR ANY LOST PROFITS, LOSS OF DATA, INCREASED MANUFACTURING COSTS, LOSS OF GOODWILL, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, ARISING OUT OF OR RELATED TO THE SALE OF EQUIPMENT TO OR BY BUYER OR USE OR INABILITY TO USE ANY PRODUCTS, EVEN IF wtec HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WTEC'S TOTAL CUMULATIVE LIABILITY IS LIMITED TO THE AMOUNTS PAID BY BUYER TO wtec DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM. NO ACTION SHALL BE BROUGHT FOR ANY BREACH OF THIS CONTRACT MORE THAN ONE YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION. BUYER ACKNOWLEDGES THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES PURSUANT TO THESE TERMS AND CONDITIONS AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE PRICING AND OTHER TERMS SET FORTH IN THESE TERMS AND CONDITIONS WOULD BE SUBSTANTIALLY DIFFERENT.

**12. APPLICABLE LAW.** The rights and obligations of the parties under this Agreement shall not be governed by the provision of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the Sale of Goods, as amended; rather, these rights and obligations shall be governed in all respects by the laws of the State of California exclusively, as such laws apply to contracts between California residents performed entirely within California. At wtec's request, any claim or action hereunder shall be brought in the state or federal courts of the City and County of San Francisco, CA.

**13. ASSIGNMENT.** Buyer may not assign this order, or any interest or right herein without the prior written consent of wtec and any assignment in violation of the foregoing shall be null and void from the beginning. Notwithstanding the foregoing, these Terms and Conditions shall be binding on any successor or assignee.

**14. SEVERABILITY.** If any provision of this Contract is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provisions of this Contract, and this Contract will be construed and enforced as if such provision had not been included.

**15. PRODUCT CHANGES.** wtec reserves the right, at its sole discretion, to discontinue manufacturing or supplying any product at any time. wtec also reserves the right to change or improve any product or specifications at any time.

**16. CONFIDENTIAL INFORMATION.** All drawings, diagrams, specifications and other materials furnished by wtec and identified as confidential relating to the use and service of the products, and the information therein, are confidential and proprietary to wtec. Such materials have been developed at great expense and may contain trade secrets of wtec. Buyer may not reproduce or distribute such materials except to Buyer's employees who may use the products as part of their duties. All such materials relating to the products supplied directly by wtec (except information as may be established to be in the public domain without fault or action of Buyer or disclosed pursuant to judicial or government action) shall be received in confidence, and Buyer shall exercise reasonable care to hold such information in confidence and in no event less care than Buyer exercises to protect Buyer's confidential information.

**17. EXPORT.** Any or all products may be subject to export or resale restriction or regulation, and Buyer agrees to comply with all such regulations or restrictions. Any or all products may have been imported. Country of origin information is as provided to wtec by its suppliers and is, where applicable, located on the products themselves or the supplier's innermost packaging thereof.

**18. GENERAL.** Buyer acknowledges that it has read and understands these Terms and agrees to be bound by them. wtec's failure to or delay in exercising any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Buyer's relationship to wtec is that of an independent contractor, and neither party is an agent or partner of the other. If any provision of this Agreement is unenforceable, such provision will be changed to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. These Terms and the invoice, purchase order or sales acknowledgement form to which it is attached constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. These Terms may be amended only by a written document signed by both parties that specifically references these Terms.