



## TERMS & CONDITIONS OF SALE

### 1. SCOPE

The Terms and Conditions of Sale ("Terms") contained herein shall apply to all proposals, quotations and offers made by and purchase orders accepted by Mach. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Buyer, and Mach hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, regardless of whether such different terms were proposed by Buyer before or after these Terms are effective, unless Mach expressly agrees to such terms in writing. In such case, the Terms contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. Mach's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing signed by an officer of Mach before becoming binding on either party. This agreement remains in effect per any signed Commercial Supply Agreement. Mach may cancel for Buyer's insolvency. The buyer may terminate per a Commercial Supply Agreement which may be in place from time to time.

### 2. PRICE, TAXES AND QUOTATIONS

Prices are subject to change upon thirty-day notice to Buyer. All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Buyer shall pay such taxes, when applicable, unless Buyer provides a proper tax exemption certificate. Unless otherwise agreed to in writing by the parties, prices quoted by Mach are those current at the date of quotation and shall be subject to variation by Mach. All prices are in United States dollars.

### 3. DELIVERY

Unless otherwise agreed in writing, sales term is Ex Works (EXW, Incoterms 2024) for international shipments and Delivered at Place (DAP, Incoterms 2024) for domestic shipments per the Supplier's Commercial Supply Agreement. For CPT shipments, shipping costs shall be invoiced separately to Buyer. Mach may deliver Products in consignments and invoice separately. Mach is not liable for delivery delays unless specified in a signed agreement.

### 4. PAYMENT TERMS

Unless otherwise agreed in writing, payment terms are net thirty (30) days from invoice date, subject to credit approval. For orders exceeding \$100,000, 20% of the purchase price is due upfront at order placement. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. For international contracts, Mach may require an irrevocable letter of credit or bank guarantee at its discretion. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account. In the event that Mach institutes any legal suit, action, or



proceedings against Buyer arising out of Buyer's failure to pay any amounts due pursuant hereto, the prevailing party in the suit, action, or proceeding shall be entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party, including actual attorneys' fees and expenses and court costs. Mach shall have the continuing right to review Buyer's credit and change Buyer's payment terms.

#### **5. NON-CONFORMING DELIVERY AND RISK OF LOSS**

Buyer shall notify Mach of any visible obvious defects, quantity shortages or incorrect product shipments within seven (7) days of receipt of the shipment. Failure to notify Mach in writing of any visible obvious defects in the products or of quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any rights to return products on the basis of visible obvious defects, shortages or incorrect shipments, subject to Buyer's rights under Section 7. Mach shall retain a security interest in the products until Buyer's final payment to Mach for the products. For domestic shipments, risk of loss and title shall pass to Buyer as soon as the products have been delivered to a destination as specified by Buyer in writing; provided, however, that the destination so specified by Buyer shall be within the contiguous United States. For international shipments, risk of loss and title shall pass to Buyer as soon as the products have been made available at the designated Mach facility.

#### **6. ORDER CANCELLATION**

Orders cannot be canceled unless for the following reasons, without the prior written consent of Mach.

- a. Buyer's Right to Cancellation. Buyer may cancel any order, in accordance with terms hereof, upon notice to Mach:
  - i. if Mach is in material breach of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Mach within 60 days after Mach's receipt of notice of such breach; or
  - ii. if Mach (i) becomes insolvent or is generally unable to pay its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, (iv) seeks reorganization, winding-up, liquidation, dissolution, or other similar relief with respect to it or its debts, or (v) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Upon cancellation, Buyer, as its sole remedy, may recover from Mach the difference between the actual, reasonable and documented cost of procurement from another course (cover) and the contract price, less expense saved as a consequence of Mach's breach; provided, however, that in no event shall such amount exceed ten percent (10%)



of Mach's product price multiplied by the number of products order by Buyer that remain unshipped at the time of Buyer's cancellation.

- b. Mach's Right to Cancellation. Mach may cancel any order, in accordance with terms hereof, upon notice to Buyer:
  - i. if Buyer is in material breach of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Buyer within 60 days after Mach's receipt of notice of such breach (provided, however, that Buyer's cure period with respect to delinquent payments shall be 30 days); or
  - ii. if Mach (i) becomes insolvent or is generally unable to pay its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, (iv) seeks reorganization, winding-up, liquidation, dissolution, or other similar relief with respect to it or its debts, or (v) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

## 7. LIMITED HARDWARE WARRANTY

- a. Mach warrants to Buyer that: (a) for a period of 1 year from the date of delivery of any hardware offered directly by Mach (the "**Mach Hardware**") (the "**Warranty Period**"), such Mach Hardware will be (i) of merchantable quality and be fit for such hardware's intended purpose, (ii) materially conform to their applicable specifications, and (iii) free from material defects in material, design, and workmanship; (b) Buyer will receive good and valid title to the Mach Hardware, free and clear of all encumbrances and liens of any kind; (c) the Mach Hardware are new and do not contain used or reconditioned parts. The foregoing warranties do not apply to any products that have been subject to misuse, neglect, or accident, or have been opened, disassembled, or altered in any way. Mach shall make the final determination as to whether its products are defective; provided, however, that such determination must be commercially reasonable. Mach's sole obligation for products failing to comply with this warranty shall be, at its option, to either repair, replace or issue credit for the nonconforming product where, within fourteen (14) days of the expiration of the warranty period, (i) Mach has received written notice of any nonconformity; (ii) after Mach's written authorization, Buyer has returned the nonconforming product to Mach at Buyer's expense; and (iii) Mach has commercially reasonably determined that the product is nonconforming and that such nonconformity is not the result of improper installation, repair or other misuse, (iv) all equipment repair or replaced under warranty will be return via collect shipment or pre-pay and add.
- b. **EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 7(a), MACH MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE MACH**



**HARDWARE , INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY MACH, OR ANY OTHER INDIVIDUAL OR ENTITY ON MACH'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 7(a). NO WARRANTY, EXPRESS OR IMPLIED, IS EXTENDED TO ANY PERSON OTHER THAN BUYER. MACH DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. THIS WARRANTY IS NON-TRANSFERABLE.**

- c. What Is NOT Covered Under This Limited Warranty**
  - i. Normal wear and tear or cosmetic damage.**
  - ii. Damage due to accidents, misuse, physical force, improper installation or operation, mishandling, neglect, fire, heat, water, humidity, liquids, insect infestation, or other intrusion.**
  - iii. Products that have been repaired, altered or modified by anyone other than Mach or its authorized service representative.**
  - iv. Problems caused by signal conditions, improper power conditions, radio interference, network reliability, cable or antenna systems.**
  - v. Damage caused by improper use, ESD, power surges or misapplication.**
  - vi. Products whose serial numbers have been removed, altered or rendered illegible.**
  - vii. Batteries**
  - viii. Products used for institutional purposes.**
  - ix. Damage caused by acts of nature such as, but not limited to, lightning damage.**
  - x. Products returned without valid proof of purchase.**
  - xi. Software**
  - xii. ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS**

## **8. LIMITED-SERVICE WARRANTY**

- a. Mach represents and warrants to Buyer that:**
  - i. it shall perform the Services (as defined below) using personnel of a required skill, experience, and qualifications and in a professional and workmanlike manner and shall devote adequate resources to meet its obligations under this Agreement.**
  - ii. it shall perform the Service in compliance with all applicable laws; and**
  - iii. the Services will be in conformity in all material respects with all specifications stated in the Proposal for a period of 30 days after delivery to Buyer. In the event of Mach's breach of the foregoing warranty, Mach's sole and exclusive obligation and liability and Buyer's sole and exclusive remedy shall be as follows:**
    - 1. Mach shall use reasonable efforts to cure such breach; provided, that if Mach cannot cure such breach within a reasonable time (but no more**



than 60 days) after Buyer's written notice of such breach, Buyer may, in its option, cancel the breaching Services.

- b. "Services" shall mean the engineering time, design work, support, repairs, maintenance, and feature development provided by Mach under this Proposal, whether included with products and software or billed separately.

## **9. RETURN OF PRODUCT**

Any return of Product will be subject to Mach's prior written consent and must be made pursuant to Mach's product return procedures then in effect. Product must be returned, transport prepaid by Buyer, to the Mach facility (no C.O.D. or Collect Freight accepted) in original boxes and packing material, unless otherwise agreed by Mach. The Product travels at the risk and responsibility of Buyer. If the returned product is claimed to be defective, a complete description of the nature of the defect must be included with the returned Product. All returns are subject to inspection. Product not eligible for return under the terms hereof shall be returned to the Buyer by Mach, freight collect. In the event Mach reasonably determines the returned Product to be defective, Mach shall reimburse Buyer for its reasonable, actual, and documented costs incurred in the transportation of the defective Product back to Mach.

## **10. ALTERATION & REVERSE ENGINEERING**

Buyer agrees not to disassemble, open, damage, deface, remove stickers, paint or otherwise alter product in any way. Buyer further agrees not to perform any act with or upon the product for the purpose of reverse engineering the product, portions of the product, or in order to ascertain the manner in which the product functions. Buyer recognizes and agrees that all internal hardware, software, and functionality not readily visible from external view of the product constitute trade secrets belonging to Mach, and that efforts to determine such internal hardware, software or functionality are expressly prohibited and constitute misappropriation of trade secrets.

## **11. LIMITED LIABILITY**

NEITHER MACH NOR BUYER SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, THE COST OF LABOR, REQUALIFICATION, REWORK CHARGES, DELAY, LOST PROFITS, OR LOSS OF GOODWILL ARISING OUT OF THE SALE, INSTALLATION OR USE OF ANY MACH PRODUCT. MACH'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OTHER OTHERWISE, SHALL NOT EXCEED ONE TIMES THE TOTAL OF THE AMOUNT PAID AND AMOUNT ACCRUED BUT NOT YET PAID TO MACH IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM; PROVIDED, HOWEVER, THAT THE IMMEDIATELY FOREGOING LIMITATION WILL NOT APPLY TO CLAIMS, LOSSES, LIABILITIES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH (i) WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; (ii) FRAUD; OR (iii) A PARTY'S EXPRESS INDEMNIFICATION OBLIGATIONS HEREUNDER.

THE LIMITATIONS AND DISCLAIMERS IN SECTION 7, SECTION 8, AND THIS SECTION 11 ARE MADE TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW. THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DISCLAIMERS AND LIMITATIONS CONSTITUTE AN ESSENTIAL PART OF THIS



AGREEMENT AND ACCURATELY REFLECT THE ALLOCATION OF RISK EXPRESSLY AGREED TO BY THE PARTIES. NOTWITHSTANDING THE FOREGOING, SOME COUNTRIES, STATES, OR PROVINCES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES FOR CERTAIN PRODUCTS. THUS THE LIMITATION OF LIABILITY AND EXCLUSIONS MAY BE LIMITED IN THEIR APPLICATION.

## **12. INTELLECTUAL PROPERTY AND INDEMNIFICATION**

- a. IP Infringement Indemnification:** Subject to the limitations herein, Mach shall indemnify, defend, and hold harmless Buyer for and against all losses, damages, liabilities, claims, actions, judgments, penalties, fines, costs, or expenses, including reasonable attorneys' fees (collectively, "**Losses**"), arising out of or resulting from any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature (collectively, "**Claim**") of a third party alleging that any product furnished hereunder constitutes an infringement of any U.S., Canadian, Japanese, EU or EFTA member country intellectual property rights. Mach must be notified promptly in writing and given full and complete authority, information and assistance (at Mach's expense) for defense of the suit. Mach will pay damages and costs therein awarded against Buyer but shall not be responsible for any compromise made without Mach's consent. In no event shall Mach's liability for such damages and costs (including legal costs) exceed two times (2x) the contractual value of the products or services that are the subject of the lawsuit. In providing such defense, or in the event that such product is held to constitute infringement and the use of the product is enjoined, Mach, in its discretion, shall procure the right to continue using such product, or modify it so that it becomes non-infringing, or remove it and grant Buyer a credit for the cost thereof. Mach's indemnity does not extend to claims of infringement arising from Mach's compliance with Buyer's design, specifications and/or instructions, or use of any product in combination with other products or in connection with a manufacturing or other process. The foregoing remedy is exclusive and constitutes Mach's sole obligation for any claim of intellectual property infringement and Mach makes no warranty that products sold hereunder will not infringe any intellectual property rights.
- b. Mach retains its Intellectual Property:** The sale of any products hereunder does not convey any license by implication, estoppel or otherwise covering combinations of the products with other equipment data or programs. Mach retains the copyright in all documents, catalogs and plans supplied to Buyer pursuant to or ancillary to the contract. Unless otherwise agreed in writing, Buyer shall obtain no interest in any mask or other tooling used in the production of any Mach product.
- c. Software License.** Any software incorporated into or provided in connection with the Products ("Software") shall be subject to license and not sale. All such Software shall be subject to the terms and conditions set forth in Exhibit A, attached hereto and incorporated herein by reference, and shall be used solely as part of the Product with which it is provided. Buyer shall ensure that use or distribution of any such Software is subject to the end user license terms and conditions set forth in Exhibit A and that Buyer



and its customers abide by such end user license agreements. Buyer shall not, and shall not permit any third party to, modify, disassemble, decompile, reverse engineer, rent, lease, loan, transfer, or make copies of the Software, except to the extent that such activities may not be prohibited under applicable law. Mach's licensors shall be third party beneficiaries with respect to such terms and conditions applicable to the respective Software and will have the right to enforce such terms and conditions on their own behalf. Any customer of Buyer must have an active license of their software with Mach or through the buyer using Mach's software to receive the benefit of such terms and conditions.

- d. General Indemnification: Subject to the terms and conditions herein, each party (each, an **"Indemnifying Party"**) agrees to defend, indemnify and hold the other party (each, an **"Indemnitee"**) harmless from and against any and all Claims asserted by a third party against any Indemnitee, to the extent arising out of, related to, or in connection with: (A) the Indemnifying Party's grossly negligent acts, omissions and/or willful misconduct; (B) the death or bodily injury of any agent or employee of the Indemnifying party, except to the extent caused by the other party; or (C) any violation by the Indemnifying Party of any applicable law. In addition to the foregoing, Buyer shall indemnify, hold harmless, and defend Mach (including all of its officers, employees, directors, subsidiaries, representatives, affiliates, agents, and suppliers) to the fullest extent permitted by law from and against any damages (including attorney's fees and expenses), claims, and lawsuits that arise or result from Buyer's use of the Software (as such term is defined in the Software User License). Notwithstanding anything to the contrary, in no event shall Mach be liable to Buyer for any losses incurred by Buyer arising out of or relating to: (1) any products provided by Mach that is modified or damaged by Buyer; (2) Buyer's operation or use of any products other than as specified in the Proposal or Buyer's misuse or misapplication of the same; or (3) any other use, circumstance, or cause outside the reasonable control of Mach relating to any products provided by Mach.

Any Indemnitee seeking indemnification for a Claim made by a third party under this Section shall give prompt written notice to the Indemnifying Party of such Claim; provided, however, that the failure by an Indemnitee to give such notice shall not relieve the Indemnifying Party of its obligations under this Section, except to the extent that the Indemnifying Party is materially prejudiced as a result of such failure. In addition, the Indemnitee shall allow the Indemnifying Party to direct the defense and settlement of any such Claim, with counsel of the Indemnifying Party's choosing, and shall provide the Indemnifying Party, at the Indemnifying Party's expense, with such information and assistance as is reasonably necessary for the defense and settlement of the Claim. The Indemnifying Party shall not be liable for any settlement of an action effected without its written consent (which consent shall not be unreasonably withheld, conditioned, or delayed), nor shall the Indemnifying Party settle any such action that affects the Indemnitee's rights or interests without the written consent of the Indemnitee. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the



claimant or plaintiff to the Indemnitee a release from all liability with respect to the Claim.

### **13. CONFIDENTIAL INFORMATION**

- a. "Confidential Information" means all information, data and other materials furnished by one party to the other in connection with these Terms. Notwithstanding the foregoing, and excepting any trade secrets and proprietary information, "Confidential Information" does not include information which: (i) is publicly disclosed by the party disclosing the information either prior to or subsequent to the receipt of such information by the receiving party; (ii) is or becomes generally known in the trade through no fault of the receiving party; (iii) is lawfully disclosed to the receiving party by a third person who has lawfully acquired the Confidential Information; or (iv) was independently developed by the receiving party; provided, however, that the receiving party hereby stipulates and agrees that, if it seeks to disclose, display, divulge, reveal, report, publish or transfer, for any purpose whatsoever, any Confidential Information, such receiving party will bear the burden of proving that any such information was independently developed or is or became publicly available without any such breach. A party's failure to mark any Confidential Information as confidential, protected, trade secret or proprietary will not affect its status as Confidential Information under these Terms.
- b. Each party agrees to maintain the confidentiality of any Confidential Information disclosed by the other party and shall protect and safeguard such Confidential Information with at least the same degree of care as it uses to protect its own Confidential Information, but no less than a commercially reasonable degree of care. Except as required by law, receiving party shall not use or disclose any Confidential Information of the other party for any purpose except for purposes connected with the performance of its obligations under these Terms. Recipient shall not disclose any Confidential Information of the other party to third parties or to receiving party's employees, agents, or contractors, except that, receiving party may disclose the other party's Confidential Information to those employees of and attorneys and advisors retained by receiving party ("Representatives") who are required to have such information in order to evaluate or engage in discussions concerning these Terms; provided, however, that the receiving party shall be responsible for any breach of this Section caused by any of its representatives. Notwithstanding anything to the contrary in this Section, a receiving party's disclosure of any Confidential Information of the other party shall not effect the ownership of or rights to any Confidential Information. Upon written request, each party shall promptly return or destroy all copies of the Confidential Information and certify such destruction in writing.
- c. Judicially Required Disclosures. In the event that a receiving party is required in any judicial or administrative proceeding or requested or required by any governmental or regulatory authority, through the service of a subpoena, order or similar process, or otherwise required pursuant to applicable law, rule or regulation, to disclose Confidential Information of a disclosing party, prior to any disclosure, the receiving party will give prompt notice to the disclosing party, unless prohibited by law from doing so, so



that the disclosing party may seek an appropriate protective order. The receiving party agrees to use commercially reasonable efforts cooperate with the disclosing party in any such efforts. In the event that a protective order is not obtained, the receiving party agrees to furnish only the portion of the Confidential Information which it is advised by opinion of counsel is legally required or requested to be furnished.

- d. The parties' obligations set forth in the Section shall remain in effect for the duration of the parties' business relationship under the Proposal and shall survive for a period of 3 years following the termination of such relationship. Notwithstanding the foregoing, any trade secrets, as defined under applicable law, shall be protected for so long as they remain trade secrets.

#### **14. FORCE MAJEURE**

Effect of Force Majeure: In the event any party is unable to perform its obligations under an Order (excluding any payment obligations), in whole or in part, as a result of a Force Majeure event as that term is defined in Section 14(a) below, such party shall be relieved from performance of its obligations under this Order to the extent and duration of such Force Majeure event. For the duration of the Force Majeure event, the other party's corresponding obligations under this Order are relieved to the extent the party claiming Force Majeure fails to perform for that reason.

- a. Force Majeure Defined: The term "Force Majeure" means a condition or occurrence that is beyond the reasonable control such as the following: acts of God or of the public enemy; severe weather conditions beyond those to which the Equipment may foreseeably be subject; fires; explosions; floods; draughts; epidemics or quarantines; freight embargoes; war; civil strife; insurrection; sabotage; terrorism; invasion; government action, riot; or strikes, labor stoppages, or slowdowns, or other industrial disturbances.
- b. Limits of Force Majeure: Neither Mach nor Buyer shall be entitled to invoke the benefit of the Force Majeure provisions in this Section 11 to the extent performance is affected by any or all of the following circumstances: economic hardship; lack of proper operation, maintenance, design or engineering by the party claiming a Force Majeure event or as to equipment or facilities utilized by such party to perform its obligations under this Order; and/or the failure of a party to use commercially reasonable efforts to remedy a circumstance that would otherwise constitute a Force Majeure event and to resume its obligations within a reasonable time. Notwithstanding the immediately foregoing, it is understood and agreed that the settlement of strikes, labor stoppages, or other industrial disturbances shall be entirely within the discretion of the party having the difficulty, and that the requirements that any Force Majeure event be remedied with commercially reasonable efforts shall not require the settlement of strikes, labor stoppages, or other industrial disturbances by acceding to the demands of opposing parties when such action is reasonably inadvisable in the discretion of the party having difficulty.
- c. Notice of Force Majeure: In the event that a Force Majeure event is claimed by a party, such party shall orally notify the other party as soon as reasonably possible after the notifying party, exercising due diligence, has determined that a Force Majeure event has

taken place. Such oral notice shall be followed by written notice by the party claiming such event to the other party promptly after such oral notice; provided, however, that the failure to make such notification within such time period shall not constitute a waiver of any rights or protections for such Force Majeure event. Such notice shall include a description of the cause, nature and extent of the Force Majeure event, the time of its occurrence, its expected duration and any actions being taken to avoid or minimize its effect.

## **15. EXPORT REGULATIONS**

Buyer acknowledges that the products and technology it receives from the Seller are subject to the U.S. export control laws and regulations, including but not limited to the Export Administration Regulations, and agrees to comply fully with all laws and regulations concerning the purchase and sale of products. Buyer further agrees not to export, reexport, transmit, or otherwise transfer any of the products and or related technology subject to these terms and conditions in violation of United States laws and regulations including but not limited to the Export Administration Regulations and the Office of Foreign Asset Controls Regulations. The products are authorized by the United States for delivery to the ultimate destination as shown on the shipment/invoice address and any contrary diversion is prohibited.<sup>1</sup>

## **16. ASSIGNMENT AND SUBCONTRACTING**

Mach shall be entitled at all times to assign its rights under the contract (in whole or in part) or to subcontract any part of the work or services to be provided under the contract as it deems necessary or desirable. Buyer may not assign any of its rights under this agreement without Mach's prior written consent; provided, however, that Buyer may, without the consent of Mach, assign any of its rights under this agreement to:

- a. Buyer's affiliates;
- b. A successor of Buyer, by consolidation, merger or operation of law if the successor has a net worth greater than or equal to Buyer's net worth immediately before the merger or consolidation; or
- c. A purchaser of all or substantially all of Buyer's assets.

Any purported assignment in violation of this Section is null and void. No assignment relieves the assigning party of any of its obligations under this Agreement.

## **17. SEVERABILITY**

These terms and conditions may be severable and the invalidity, illegality or unenforceability in whole or in part of any provision shall not affect the validity of other provisions. To the extent of any such invalidity, illegality or unenforceability the parties by mutual agreement, or the

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<sup>1</sup> NTD: Parties to discuss whether to address tariffs.



adjudicator in any proceeding shall have authority and jurisdiction to sever such provision and to add to these terms and conditions a provision similar in terms and intended effect as may be possible, legal, valid and enforceable.

#### **18. NOTICES**

Any notice hereunder shall be deemed to have been given if sent by prepaid first class mail to the party concerned at its last known address. Notice to Mach shall be to:

Mach Inc  
2002 Bethel Rd, Ste 105  
Finksburg, MD 21048

Notice to Buyer shall be to:

[TO BE SUPPLEMENTED BY BUYER]

#### **19. OFFICIAL LANGUAGE**

The official language of these terms and conditions and of any related documents is English, which shall be controlling for purposes of interpretation, or in the event of a conflict between English and non-English versions.

#### **20. WAIVER**

Failure by either party to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

#### **21. APPLICABLE LAW**

UNLESS OTHERWISE AGREED IN WRITING, THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF IOWA, USA WITHOUT REFERENCE TO ITS CHOICE OF LAW RULES AND SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACT FOR THE INTERNATIONAL SALE OF GOODS. The Parties each consent to the exclusive venue of the courts of competent jurisdiction in Polk County within the State of Iowa and waive any claim based on personal jurisdiction or forum non convenience.

#### **22. WASTE ELECTRICAL & ELECTRONIC EQUIPMENT (WEEE)**

If the Mach products are furnished to Buyer as component products on an OEM basis or as private label goods for distribution under Buyer brands, then Buyer understands and agrees that Buyer shall be deemed the “producer” of all such Products under any laws, regulations or other statutory scheme providing for the marking, collection, recycling and/or disposal of electrical and electronic equipment (collectively, “WEEE Regulations”) in any jurisdiction whatsoever, (such as for example national laws implementing EC Directive 2002/96 on waste electrical and electronic equipment, as amended), and shall be solely responsible for complying with all such applicable WEEE Regulations.



## **23. TRADEMARKS and BRANDS**

Mach's trademarks and brands are Mach intellectual property and are important and valuable assets of the corporation. Buyer(s) cannot remove, alter or conceal Mach's trademarks or logos from Products without prior approval, in Mach's sole discretion.

## **24. PUBLICITY**

Mach may not use Buyer's name and logos in its customer lists and provide a brief factual description of the Buyer in Mach's prospect presentation materials and other marketing materials without the prior, written consent of Buyer.

## **25. PROTOTYPES**

With the prior written consent of Buyer, Mach may provide Prototype Products, Accessories, Software, and Signal Services ("Prototypes") from time to time. All such Prototypes will be identified as such in advance. Such Prototypes are for use only in product testing/evaluation by qualified Buyer representatives in an appropriate test environment. PROTOTYPES ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER AGREES TO DEFEND, INDEMNIFY AND HOLD MACH HARMLESS FROM ANY AND ALL CLAIMS RELATED TO PROTOTYPES.

## **26. SIGNAL SERVICES LICENSE**

- a. To the extent any Signal Services (as defined below) are provided by Mach in accordance with the Proposal, this Section shall govern. "Signal Services" shall mean any correction signal subscriptions which may be available from various third parties. For purposes of this Section, "Third-Party Signal Service Materials" shall mean materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Signal Services that are not proprietary to Mach.
- b. Except as otherwise expressly agreed to in writing by Mach, Signal Services shall not be used in conjunction with any receiver hardware provided by Mach and incorporated within any autonomous road motor vehicle.
- c. Nothing herein grants any right, title, or interest in or to (including any license under) any intellectual property rights in or relating to any Third-Party Signal Service Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to any Third-Party Signal Service Materials are and will remain with the respective rights holders in the Third-Party Signal Service Materials.
- d. Buyer shall not, and shall not permit any other person to, access or use the Third-Party Signal Service Materials except as expressly permitted by the applicable third-party license agreement.
- e. Mach shall have no liability whatsoever with respect to any Losses incurred by Buyer to the extent arising out of, related to, or in connection with Buyer's use of any Third-Party Signal Service Materials. Further, subject to the provisions of Section 12 herein, Buyer shall defend, indemnify and hold Mach harmless for and against all Claims asserted by a



third-party to the extent arising out of, related to, or in connection with Buyer's use of any Third-Party Signal Service Materials.

- f. ALL THIRD-PARTY SIGNAL SERVICE MATERIALS ARE PROVIDED "AS-IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY SIGNAL SERVICE MATERIALS IS STRICTLY BETWEEN BUYER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY SIGNAL SERVICE MATERIALS.

## **27. ORDER OF PRECEDENCE**

In the event of conflict in substance or impact between these Terms, any Software User License, any Business Proposal, and any Commercial Supply Agreement, the order of precedence is:

- i. The certain Commercial Supply Agreement entered into between the Parties;
- ii. The certain Business Proposal entered into between the Parties;
- iii. These Terms; and
- iv. The Software User License entered into between the Parties.



Exhibit A

Software User License

(See attached.)