

**Definitions**

**Affiliate** means in reference to a corporation another corporation which controls it, is controlled by it, or is under common control with it.

**Agreement** means a contract between Company and Client, formed on the acceptance by Company of the Client's order, as comprised in clause 2(a).

**AMC** means AMC USA LLC and includes any Affiliates and Associated Persons.

**Applications** means the software applications (if any) set out in an Order Document, which may include software applications proprietary to Company as well as third party software applications.

**Associated Person** means any owner (including any principal, shareholder or person having a direct or indirect financial interest), officer, director, partner, principal, employee, agent or any other person, directly or indirectly, controlling, controlled by, or under common control with a party.

**Client** means the person or entity named as the applicant on the Credit Application made to Company. If there is no Credit Application, "Client" means the person or entity requesting the Supply from Company or its authorised agent.

**Credit Application** means a credit application form completed by the Client and submitted to Company requesting a Supply on credit.

**Claims** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, order, settlement sum, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving Company, the Client or a third party.

**Company** means the AMC or Reflex entity referred to in the Credit Application or in the Client's Supply request and includes any Affiliates or Associated Persons.

**Consequential Loss** means any one or more of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement, including any of the preceding types of loss arising from an interruption to a business or activity.

**Credit Facility** means a credit facility provided by Company to the Client permitting the Client to pay amounts due to Company for the Supply after the Supply has been Delivered.

**Delivery (or Delivered (as the case may be))** means delivery of the Supply in accordance with clause 6.5.

**Desktop Software** means an application proprietary to the Company as well as a third party application that runs stand alone on a desktop or laptop computer and includes but is not limited to REFLEX XRF Connect, REFLEX SProcess, REFLEX GMIT5 and all future desktop applications that may be offered by the Company in the future.

**Fee** means the fee payable by the Client for the Supply as set out in a quotation or an Order Document (as applicable).

**General Terms and Conditions** means these general terms and conditions provided by Company and as may be amended and published on the Company website or as notified to Client from time to time.

**Goods** means any item of whatsoever nature which is supplied, sold or hired by Company.

**Intellectual Property Rights** means all rights in any knowledge of secret processes, technical knowhow, techniques, discoveries, inventions, ideas, research, engineering and manufacturing methods, practices, systems, formulae, drawings, designs, specifications, manuals, trade secrets and special purpose computer programmes, financial, marketing and other confidential information and data subsisting in or relating to a Supply or Company's business.

**Order Document** means a document prepared by Company detailing the Goods to be rented, the scope of any Services, Applications, and Desktop Software to be provided (if any) plus any other additional information required.

**Personal Information** has the meaning attributed to it under Privacy Law.

**Personnel** means in relation to a party, any Affiliates and Associated Persons, employee, officer, agent, contractor or professional adviser of that party.

**Privacy Law** means the *Personal Information Protection and Electronic Documents Act* (Canada) and any other applicable laws relating to preservation of privacy of personal information.

**Proposal** means any document prepared by Company which outlines a proposed Company solution for a Client and includes a quotation.

**PPSA** means the *Personal Property Security Act* (Ontario) as amended, and where the Goods are located or used in a Province of Canada other than Ontario, PPSA includes, where determined by REFLEX in its sole discretion, the analogous personal property security law of that Province.

**PPS Law** means the PPSA together with any subsidiary legislation or regulations made under the PPSA, any amendment to other legislation made as a consequence of the PPSA and any amendment to a PPS Law from time to time.

**Reflex** means Reflex Instruments North America Ltd and includes Affiliates and Associated Persons.

**Security Interest** has the same meaning as under the PPS Law.

**Services** means any other services provided by Company to the Client other than the sale, hire or supply of the Goods, including but not limited to engineering and technical work, data management, consulting services, the assembly, disassembly or installation of the Goods, instructing the Client, its Personnel or any other person in the use or operation of the Goods or operating or supplying an operator for the Goods.

**Special Terms and Conditions** means the special terms and conditions provided by Company and as may be amended and published on the Company website or as notified to Client from time to time, which apply when the Supply involves the hire of Goods or the provision of Services, Applications or Desktop Software.

**Supply** means the provision of Goods (whether sold, supplied or hired to the Client), Services, Applications and/or Desktop Software.

**1. Application**

1.1 These terms and conditions will apply where Company performs a Supply for a Client, or other person at the direction of the Client, along with any other terms and conditions as provided in clause 2(a) and agreed to in writing by the parties, to form the Agreement.

1.2 Company may amend the terms of the Agreement from time to time by giving the Client notice in writing of the amendments at least 1 month prior to the amendments taking effect.

1.3 Any terms or conditions put forward by a Client in respect of a Supply (whether in a purchase order or otherwise), will not be binding on Company so far as they differ from or purport to amend, annul or vary any terms of the Agreement, unless specifically agreed to by Company in writing.

1.4 To the extent that the terms of any request by a Client for Company to perform the Supply (whether in a purchase order or otherwise) differ from the terms of the Agreement:

- (a) the acceptance by Company of the request will be deemed to be an offer to supply only on the terms of the Agreement and acceptance of a Supply by the Client will constitute acceptance of that Supply on the terms of the Agreement; and
- (b) the terms of the Agreement will prevail.

1.5 If the Client does not wish to receive a Supply on the terms of the Agreement, as amended from time to time, the Client must notify Company within seven days of notification of the amendment, otherwise the Client will be deemed to have accepted the Supply on the terms of the Agreement as amended.

**2. Formation and precedence**

(a) The following may be comprised in an Agreement:

- (i) the Order Document;
- (ii) the Special Terms and Conditions;
- (iii) the Proposal (if applicable);
- (iv) the General Terms and Conditions; and
- (v) any other document forming part of an Agreement as agreed to in writing by the parties.

(b) In the event of any conflict or inconsistency between one or more of the documents comprised in an Agreement, the provisions of the earlier mentioned document in clause 2(a) will prevail to the extent of that inconsistency.

**3. Quotation**

Any quotation issued by Company may be withdrawn or varied at any time prior to a related order being accepted by Company in accordance with clause 4. A quotation will only be valid for 30 days from its date of issue, unless extended in writing by Company. All prices quoted by Company relate to the Supply on the terms of the Agreement.

**4. Orders and Acceptance of orders**

The Client may request Company to perform a Supply in accordance with the terms of the Agreement by providing an order to Company. Company may accept or reject an order in whole, or in part, and will notify the Client if the order or part of the order is not accepted. The performance of a Supply by Company for the Client is evidence of acceptance of the order.

**5. Payment**

5.1 The Client must make all payments to Company free from any set-off, defence, counter-claim or re-coupment of any kind whatsoever.

5.2 Company will submit to the Client an invoice for the Supply or any part thereof Delivered, or to be Delivered, and the full amount of each invoice together with any additional charges, costs and expenses (if any) will be paid by the Client to Company by the later of:

- (a) where Company has agreed in writing to extend credit to the Client, the date for payment as specified by the agreed credit terms notified in writing by Company to the Client;
- (b) the date for payment as specified in the invoice;
- (c) 7 days from the date of Delivery; and

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- (d) such other date as agreed between the parties in writing.
- 5.3 Company reserves the right to issue an invoice for partial Deliveries and Deliveries delayed at the request of the Client.
- 5.4 Company may, with prior written notice to the Client, offset any amount due from Company to the Client against any amount due from the Client to Company, whether in connection with the Supply or otherwise.
- 5.5 Where Company agrees to extend credit to the Client, the Client must make payments when so required to ensure the total amount outstanding from time to time remains within the credit limit determined by Company.
- 5.6 Company may, with the prior written consent of the Client, increase the Fee every 12 months from the first of July and at such other times agreed between the parties.
- 6. Delivery**
- 6.1 The time within which Company may advise the Client that it will make Delivery of the Supply will be regarded as a best estimate, but will not be guaranteed and may be subject to extension to cover delays caused by or contributed to by weather, industrial action, manufacturers or suppliers, fire or any other cause beyond the control of Company. No responsibility, liability or Claim will be accepted by Company for the consequences of any such delay(s) beyond the Company's reasonable control.
- 6.2 If, as a result of causes beyond Company's reasonable control, Company determines that it will not be able to deliver all or part of the Supply within a reasonable timeframe, either party may terminate the relevant Agreement. Company agrees to indemnify the Client for the direct additional costs incurred as a result of such termination, and otherwise both parties release each other from any Claims in relation to the Agreement and in respect of the termination.
- 6.3 Delivery of the Supply may be effected as a whole, or in separate parts with prior agreement of the parties.
- 6.4 If the Client requests Company to delay Delivery of any or all of the Goods, Company may agree to store the Goods, with such storage to be at the Client's expense.
- 6.5 Where applicable, Company will deliver the Goods to the Client in accordance with the Agreement or, if not specified or otherwise agreed by Company in writing, by delivering the Goods ex works (as that term is defined in the Incoterms 2010) or such other location within Canada as nominated by Company acting reasonably (**Delivery Point**).
- 6.6 If the Delivery Point is Company's premises, the Client must remove the Goods from the Delivery Point within 14 days of the date of Delivery.
- 7. Inspection**
- 7.1 The Client must inspect the Supply as soon as practicable on Delivery.
- 7.2 Subject to clause 8, no Claim for shortages or damages or defective Supply may be made against Company unless written notice of such claim is received by Company within 3 days after Delivery. Upon such notice Company reserves the right to rectify any shortage or damages or defective Supply at its own expense and within reasonable time after notification by the Client.
- 7.3 Subject to clause 8, if the Client fails to notify Company in accordance with clause 7.2, the Client will be deemed to have accepted the Supply.
- 8. Warranties and Exclusions**
- 8.1 Subject to any warranties which are implied by law and cannot otherwise be excluded, Company excludes all other warranties, guarantees, terms, conditions or liability in relation to the Supply.
- 8.2 To the extent that Company's liability cannot be excluded by law, Company's liability with respect to the Supply will be limited to any one or more of the following as determined by Company in its absolute discretion:
- the cost of replacing the Goods or resupplying the Services; or
  - the cost of having the Goods repaired or Services resupplied.
- 8.3 The Client agrees that it has made its own enquiries as to the suitability of the Supply (or any part of the Supply) for the Client's intended use and the Client has not relied upon any statement, representation or information provided by or on behalf of Company in respect of the Supply (including the use of the Supply).
- 8.4 The Client agrees to take all reasonable steps to mitigate any loss or damage it suffers or incurs.
- 9. Limitation of liability**
- 9.1 Subject to clause 9.2, Company's total potential liability arising out of or in connection with its performance of its obligations pursuant to the Agreement or in respect of the Supply, including without limitation any negligent acts or omissions, is limited as follows:
- Neither party shall have liability to the other party for any Consequential Loss; and
  - Company's total aggregate liability for any and all loss or damage, however arising, is capped at the Applicable Tax exclusive aggregate price paid by the Client to Company under the Agreement
- for the specific Supply that gave rise to the loss or damage in question or the amount of CAD \$50,000 whichever is less.
- 9.2 The limitations in clause 9.1 do not apply to the extent that any loss or damage is directly attributable to fraud or wilful misconduct by Company.
- 10. Release and Indemnity**
- 10.1 Except to the extent a Claim or demand is caused by the negligent act or omission of the Company, the Client releases and discharges Company from all Claims and demands on Company and any direct loss or damage caused to the Client or any other person and indemnifies and holds Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Company and from and against all Claims made against Company, arising in either case as a result of, or which has been contributed to by:
- the Client's breach of any of its obligations under the Agreement;
  - the Client's failure to comply with any laws, rules, standards, or regulations applicable to the Agreement or the Supply;
  - the Client's failure to keep any Goods which are the property of Company safe and secure;
  - any use of the Goods contrary to any instructions or warnings given by Company or the manufacturer of the Goods;
  - any other negligence or any breach of duty by the Client;
  - any compliance or adherence by Company with any instruction by the Client; or
  - any reliance by Company on any representation by the Client.
- 10.2 The parties agree and acknowledge that, for the purposes of clause 10.1, a reference to the Client includes the Client's agents, employees, directors, representatives and contractors and any person or party who uses the Supply or claims an interest in the Goods as a result of a transaction with, or otherwise with the permission of, the Client.
- 11. Default by the Client**
- 11.1 In the event the Client:
- breaches or is alleged to have breached the Agreement and fails to rectify such breach when requested by the Company;
  - threatens or is likely to become subject to any insolvency, administration or bankruptcy;
  - has made any false, inaccurate or misleading statements having a material effect in relation to the making of the Agreement or any related or collateral document; or
  - in Company's opinion, acting reasonably, has a material adverse change in their financial condition;
- Company may, without prejudice to any other rights:
- refuse to perform a Supply except where payment in full has been received by Company prior to a Supply; and
  - retain (where applicable) all moneys paid on account of any Supply.
- 11.2 If the Client defaults in paying any invoiced amount or any amount otherwise due and owing from the Client to Company, and fails to rectify such default within seven (7) days of a written request from the Company to do so:
- the Client must pay interest on the highest debt balance of each calendar month on monies owing by the Client to Company calculated daily from the date the amount became payable to the date of payment at an annual rate of interest of 36% and the rate advised by the Bank as the rate charged by the Bank on overdrafts in excess of \$100,000, or interest costs awarded by the courts, whichever is the greater (to a maximum of 60% per annum); and
  - any unpaid amount together with interest and any other expenses becomes a debt due by the Client to Company and the Client must pay Company's reasonable costs of any enforcement action, including, but not limited to, any legal costs.
- 12. Survival**
- All obligations of the parties under an Agreement will survive the expiration or termination of the Agreement to the extent required for full observance and performance.
  - The following clauses survive termination of the Agreement: clause 9 (Limitation of Liability); clause 10 (Release and Indemnity); clause 11 (Default by the Client); clause 16 (Intellectual Property) and this clause 12.
- 13. Governing Law**
- The Agreement will be governed and determined in accordance with the Province of Ontario and the parties submit to the non-exclusive jurisdiction of the courts of that Province. The operation of the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.
- 14. Amounts Exclude Applicable Taxes**
- Unless otherwise agreed by Company in writing, all amounts payable in relation to the Agreement are expressed to be exclusive of Applicable Taxes which are the sole responsibility of the Applicant

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### 15. Assignment

Either party may assign any rights or obligations pursuant to the Agreement to any other party on giving the 30 days' prior written notice in writing.

### 16. Intellectual Property

16.1 Title, right and interest in the Intellectual Property is and will remain the property of Company.

16.2 In dealing with the Intellectual Property, the Client must not:

- (a) disclose or furnish the Intellectual Property to any other person and all reasonable precautions must be taken to protect such confidentiality;
- (b) copy, distribute, transmit, display, perform, reproduce, publish, licence, modify, rewrite, allow or permit derivative works to be created from, transfer or sell the Intellectual Property; or
- (c) allow copies of the Intellectual Property to be printed, published, made, reproduced or otherwise communicated without acknowledging Company's right, title and interest in the Intellectual Property.

16.3 The Client must ensure that the Intellectual Property is not subjected to any treatment which is prejudicial to the reputation of, or which would infringe the rights of Company.

### 17. Risk and Title

17.1 Risk in the Goods passes to the Client immediately upon Delivery and the Client must insure the Goods at its own expense from the date of Delivery.

17.2 Title in any Goods sold by Company will not pass to the Client until all amounts whatsoever payable by the Client to Company have been paid. This interest of Company in the Goods will continue in the Goods, products of the Goods and any proceeds derived from any of them.

17.3 Title in any Goods rented by Company to the Client shall at all times remain with Company.

17.4 Any payment made by or on behalf of the Client which is later avoided by the application of any statutory provisions will be deemed not to discharge Company's title in any Goods sold by Company or the Client's indebtedness owed to Company.

17.5 Where Goods are sold by Company to the Client without payment of the price in full being made prior to Delivery, the Client:

- (a) holds the Goods on trust for Company until all amounts owed by the Client to Company have been paid in full;
- (b) must keep the Goods in its possession, and take good care of them and store them and mark them in a manner that identifies the Goods and clearly shows that they belong to Company; and
- (c) must immediately return the Goods to Company on demand.

17.6 In the event the Client fails to return the Goods following the making of a demand, Company or its agents may enter the premises at which the Goods are located and take possession of the Goods. The Client agrees to obtain and provide any consent necessary for such entry by Company and to indemnify Company or its agents for any liability arising from any entry upon such premises and the seizure of the Goods.

17.7 Where Goods have been returned or repossessed under clauses 17.5 or 17.6, Company may resell the Goods to another person. Company will be entitled to retain the proceeds of any Goods sold to the extent necessary to cover the indebtedness of the Client.

17.8 The Client acknowledges that if it mixes the Goods with other products or items through manufacturing, processing, assembling or commingling so that the Goods are no longer separately identifiable, any Security Interest shall continue for the purposes of the PPS Law and that Company will continue, only for the purposes of the PPS Law, to hold a Security Interest in the processed or commingled goods.

17.9 The Client must not attempt to give or allow any Security Interest, lien, mortgage, claim or similar interest to exist or arise over the Goods in which Company retains title or any proceeds from the sale of those Goods in favour of another person (other than Company).

### 18. PPS Law

18.1 To the extent that a Security Interest arises under an Agreement or any Supply in favour of Company as the secured party:

- (a) the Client acknowledges that the Security Interest will attach to any proceeds or any accessions;
- (b) the Client agrees to Company effecting a registration on the PPS Register (in any manner Company considers appropriate) in relation to any Security Interest and the Client agrees to provide all assistance reasonably required to facilitate this (including executing any supplementary document and paying all costs in connection with effecting, maintaining, amending or discharging that registration);
- (c) the Client waives the right to receive any verification statement (or notice of any verification statement) in respect of a registration made on the PPS Register; and

(d) the Client must not, without first giving Company 14 days' prior written notice, amalgamate, redomicile out of its Province of incorporation, change its name, or any other identifiers which are required to be recorded on the PPS Register in connection with any Security Interest.

### 19. Special Obligations for ITAR Items – Country of Use (Where Applicable)

19.1 Where any Goods contain military technology or other controlled defence articles under the US International Traffic in Arms Regulations or any other export control regulations imposed by any other country or union including but not limited to Australia and the European Union (**ITAR Items**), Company will use reasonable endeavours to ensure the necessary documentation is in place in order for the relevant governing or regulatory body including but not limited to the United States of America Department of State and the Defence Export Control Office (**Authority**) to approve the Client and the stated country of use for an export licence in relation to the Goods which contain ITAR Items.

19.2 The Client acknowledges that the ITAR Items in the Goods are authorized by the Authority for export only to the approved country of destination for use by the approved end-user. The Client also acknowledges that the ITAR Items may not be transferred, trans-shipped on a non-continuous voyage, or otherwise disposed of in any other country, either in its original form or after being incorporated into other end-items, without the prior written approval of the Authority.

19.3 The Client acknowledges and agrees that if the Client (or a subsequent end user) wishes to transfer ownership, lease, lend or transport the Goods with the ITAR Items outside of the country approved by the Authority then the Client will require a new export license (at its sole expense) prior to such transfer.

19.4 Should the Client breach any of the terms and conditions contained in clauses 19.1 to 19.3 then Company may, without limitation to any other right of Company, withhold service, repairs, support, training and/or further supply of the Goods with ITAR Items to the Client.

### 20. Privacy

20.1 Both parties agree to comply with the Privacy Law, as amended from time to time, in relation to any and all Personal Information exchanged in connection with an Agreement.

20.2 The Client consents, acknowledges and agrees that any Personal Information provided to Company may be:

- (a) transferred to, and stored at, a destination outside Canada; and
- (b) processed by Personnel or by other third parties operating outside Canada.

### 21. Language

The parties have expressly requested and required that the Agreement and all other related documents be drawn up in the English language. Les parties conviennent et exigent expressément que ce Contrat et tous les documents qui s'y rapportent soient rédigés en anglais.