

**VERIWAVE, INC.**  
**STANDARD TERMS AND CONDITIONS OF SALE**

THE TERMS AND CONDITIONS OF SALE (THIS “AGREEMENT”) CONTAINED HEREIN APPLY TO ALL QUOTATIONS, PURCHASE ORDERS, ACKNOWLEDGMENTS AND OFFERS FOR PRODUCTS ISSUED OR RECEIVED BY VERIWAVE, INC. (“SELLER”) TO OR FROM BUYER (“BUYER”). SELLER’S ACCEPTANCE OF ANY BUYER PURCHASE ORDER IS EXPRESSLY CONDITIONED ON BUYER’S ASSENT TO THIS AGREEMENT. NO TERMS OR CONDITIONS SET FORTH IN BUYER’S PURCHASE ORDER, TO WHICH NOTICE OF OBJECTION IS HEREBY GIVEN, OR IN ANY FUTURE CORRESPONDENCE BETWEEN BUYER AND SELLER, SHALL ALTER OR SUPPLEMENT THIS AGREEMENT UNLESS BOTH PARTIES HAVE AGREED IN WRITING TO MODIFY THIS AGREEMENT. NEITHER SELLER’S COMMENCEMENT OF PERFORMANCE NOR DELIVERY OF ANY PRODUCTS SHALL BE DEEMED OR CONSTRUED AS ACCEPTANCE OF BUYER’S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS. SELLER RESERVES THE RIGHT TO REJECT ANY ORDER OR TO CANCEL ANY ORDER PREVIOUSLY ACCEPTED IF SELLER DETERMINES THAT BUYER IS IN BREACH OF ANY TERM OR CONDITION HEREIN.

1. **PRICES.** All quotations shall constitute offers subject to this Agreement. Unless otherwise stated in writing by Seller, all prices quoted: (i) expire after thirty (30) days of the date they are provided to Buyer hereunder or otherwise; and (ii) are exclusive of transportation, insurance, federal, state, local, excise, value-added, use, sales, property (ad valorem) and similar taxes or duties now in force or hereafter in effect. In addition to the prices quoted or invoiced, Buyer agrees to pay all taxes, fees, or charges of any nature whatsoever (including any withholding or similar taxes) imposed by any governmental authority on, or measured by, the transaction between Buyer and Seller. In the event that (i) Seller is required to collect the foregoing, such amounts will appear as separate items on Seller's invoice and paid by Buyer unless Buyer provides Seller with a valid tax exemption certificate authorized by the appropriate taxing authority or (ii) Buyer is required to withhold the foregoing Buyer will increase its payment to Buyer by the amount required to be withheld such that Seller receives the original invoiced amount.

2. **TERMS OF PAYMENT.** Unless otherwise set forth on the face hereof, all invoices shall be paid in full in U.S. dollars within thirty (30) days of the invoice date. Buyer shall pay interest at the rate of 1.5% per month or the highest legal rate on any invoice not paid when due. Seller reserves the right at any time and for any reason to require payment in advance or C.O.D., or otherwise to modify, suspend, or terminate any credit terms previously extended to Buyer. If Seller believes in good faith that Buyer's ability to make any payment required hereunder is or may be impaired, Seller may cancel this Agreement (or any remaining balance thereof), and Buyer shall remain liable to pay for any products previously shipped. When partial shipments are made, payments shall become due in accordance with the designated terms upon submission of an invoice covering any such partial shipment.

3. **DELIVERY AND TITLE.** All sales are made F.O.B. (OR. U.C.C.) Seller's designated shipping point. Subject to Seller's right of stoppage in transit, delivery of products to a carrier at the shipping point in good condition or delivery by Seller to Buyer's representative at Seller's warehouse or plant shall constitute delivery to Buyer, and risk of loss and title shall thereupon pass to Buyer.

4. **SHIPMENTS.** In the absence of specific shipping instructions, Seller shall select a carrier who shall be deemed to act as Buyer's agent. Seller shall be under no

obligation to ship via any carrier selected by Buyer if such carrier does not comply with applicable laws. Transportation charges will be collected on delivery or, if prepaid, will be subsequently invoiced to Buyer. When special or export packaging is requested or, in the opinion of Seller, required under the circumstances, the cost of the same, if not set forth on the invoice, will be separately invoiced. All shipping dates are approximate and Seller may change the delivery date without penalty provided Seller provides Buyer with reasonable notice of such change, such notice in all events not to be less than three (3) days prior to the initial delivery date. Seller shall not be responsible for any failure to perform or delay in performing which is directly or indirectly due to any governmental or military regulation or requirement, act of God, war, riot, terrorism, embargo, fire, flood, natural disaster, strike or other labor dispute, foundry delays, unavailability of supplies, materials or transportation facilities, or any other circumstances or causes beyond Seller's reasonable control. Any affected delivery date shall be deemed extended for a period of time at least equal to the delay incurred.

5. **DEFAULT, CANCELLATION AND RESCHEDULING.** In the event of Buyer's default in payment for the products purchased hereunder, Buyer shall be responsible for all reasonable costs and expenses incurred by Seller in collection of any sums owing by Buyer (including reasonable attorneys' or similar agent's fees related to collection), and Seller may decline to make further shipments to Buyer without in any way affecting its rights under this Agreement. If, despite any such breach by Buyer, Seller elects to continue to make shipments, such shipments shall not constitute a waiver of any breach by Buyer or in any way affect Seller's legal remedies arising from such breach. Accepted orders for goods may only be cancelled by Buyer upon Seller's prior written consent thereto. Any such cancellation shall be subject to payment of all costs and expenses incurred by Seller in connection with procuring and filling Buyer's order, including a reasonable profit thereon.

6. **SECURITY INTEREST.** Seller hereby reserves for itself a purchase money security interest in all goods sold hereunder and the proceeds thereof, in the amount of the purchase price. In the event of default by Buyer in any of its obligations to Seller, Seller will have the right to repossess the goods sold hereunder without liability to Buyer. These security interests will be satisfied by payment in full. A copy of the invoice may be filed with appropriate authorities at any time as a financing

statement and/or chattel mortgage to perfect Seller's security interest. On request of Seller, Buyer will execute financing statements and other instruments that Seller may request to perfect Seller's security interest herein.

#### **7. SOFTWARE LICENSE AND RESTRICTIONS**

Software License and Restrictions are provided in the product End User License Agreement (EULA) available at [www.veriwave.com](http://www.veriwave.com).

#### **8. LIMITED PRODUCT WARRANTY.**

Limited Product Warranty language is provided in the VeriWave WaveDeploy and WaveTest Limited Warranty Agreements available online at [www.veriwave.com](http://www.veriwave.com).

**9. BUYER INDEMNITY.** Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims brought by any third party against Seller or its suppliers arising out of or related to Buyer's use or distribution of the products purchased hereunder, including (i) any claim arising out of or related to any warranty made by or on behalf of Buyer to its customers that expands any warranties provided and permitted herein or fails to limit any liability as provided herein or (ii) any breach of Buyer's obligations pursuant to Section 15; provided, however, that Seller: (a) gives immediate written notice to Buyer of the institution of the suit or proceedings; and (b) permits Buyer through its counsel to defend the same and gives Buyer all needed information, assistance and authority to enable Buyer to do so.

**10. SELLER INDEMNITY.** Seller warrants to customer that its use of product in accordance with the Seller's applicable instructions or documentation will not violate any patent, copyright, or other intellectual property right of a third party. In the event the foregoing warranty is breached and the use of product is enjoined, Buyer shall, at its sole option and expense (i) modify the product such that it is no longer infringing; (ii) replace the product with non-infringing product that provides at least the same level of functionality and performance as the infringing product; or (iii) terminate this Agreement with respect to such infringing product and refund to Buyer the purchase price of the relevant product or portions thereof that gave rise to such liability or one hundred dollars whichever is greater. THE FOREGOING STATES SELLER'S SOLE AND EXCLUSIVE OBLIGATION AND SELLER'S SOLE AND EXCLUSIVE REMEDY FOR ANY VIOLATION OR MISAPPROPRIATION OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

#### **11. LIMITATION OF LIABILITY.**

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY BUYER, OR FOR ANY LOSS OF PROFITS OR LOSS OF USE, INCLUDING LOSS OR DAMAGE TO ANY NETWORKS, SYSTEMS, DATA OR FILES, CORRUPTION OF ANY NETWORK, SYSTEMS DATA OR FILES, COMPUTER FAILURE OR MALFUNCTION, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR OTHER DAMAGES HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THIS EXCLUSION ALSO INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST BUYER. EXCEPT AS SET FORTH IN SECTION 10 ABOVE, SELLER ASSUMES NO OBLIGATIONS OR LIABILITY OF ANY KIND WITH RESPECT TO INFRINGEMENTS OR ALLEGED INFRINGEMENTS OF UNITED STATES OR FOREIGN PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER PROPRIETARY RIGHTS ARISING OUT OF BUYER'S PURCHASE, USE, OR POSSESSION OF SELLER'S PRODUCTS AND BUYER ASSUMES ALL SUCH RISK. IN NO EVENT SHALL SELLER'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE PURCHASE PRICE OF THE RELEVANT PRODUCTS PAID BY BUYER TO SELLER WHICH GAVE RISE TO SUCH LIABILITY.

(b) THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF SELLER ARISING OUT OF THIS AGREEMENT AND/OR SALE OF PRODUCTS TO BUYER, AND THE PARTIES EXPRESSLY AGREE WITH THE RESULTING ALLOCATION OF RISK.

(c) VeriWave is not a Medical Device Manufacturer. VeriWave products are not used in the treatment or diagnosis of any human ailment. VeriWave will not be given access to any Protected Health Information as defined by HIPPA.

#### **12. SUBSTITUTIONS AND MODIFICATIONS.**

Seller reserves the right to (i) make substitutions and modifications in the specifications of products sold by Seller, provided that such substitutions or modifications do not materially affect overall product performance, and

(ii) discontinue or otherwise end-of-life any product sold hereunder.

**13. IMPORT AND EXPORT REQUIREMENTS.**

Buyer shall, at its own expense, pay all import and export licenses and permits, pay all value-added and other VATs, customs charges and duty fees, and take all other actions required to accomplish the export and import of the products purchased by Buyer. Buyer understands that Seller may be subject to regulation by agencies of the U.S. government, including the U.S. Department of Commerce, which prohibit export or diversion of certain technical products to certain countries. Buyer warrants that it will comply in all respects with the export and re-export restrictions set forth in the export license for every product shipped to Buyer.

**14. APPLICABLE LAW AND CONSENT TO JURISDICTION.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO CHOICE OF LAW PROVISIONS, AS APPLIED TO AGREEMENTS AMONG OREGON RESIDENTS ENTERED INTO AND TO BE PERFORMED ENTIRELY WITHIN OREGON. THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT OR TO ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT

**15. ASSIGNMENT.** This Agreement shall bind and inure to the benefit of Seller's successors and assigns, including without limitation, any entity into which Seller shall merge or consolidate. Buyer may not assign, directly or indirectly, by operation of law or otherwise, any of Buyer's rights or obligations under this Agreement without Seller's prior written consent. Any attempted assignment, delegation, or transfer by Buyer without such consent of Seller shall be void.

**16. ENTIRE AGREEMENT.** Subject to Sections 7 and 8 above, the terms and conditions set forth herein constitute the entire Agreement between Buyer and Seller and supersede any other agreements or offers, including any purchase order of Buyer, prior or contemporaneous oral or written understandings, or communications relating to the subject matter hereof.

