



## ASTRONICS TEST SYSTEMS INC. ("Licensor") TERMS AND CONDITIONS FOR SOFTWARE- SW001

### PURCHASER ACCEPTANCE

These Terms and Conditions constitute a binding contract between Licensee and Licensor and are referred to herein as either "Terms and Conditions" or this "Agreement". Sold To entity listed on Acknowledgement ("Licensee") accepts these Terms and Conditions by licensing from or placing an order with or otherwise requesting software (the "Software"). If, however, for any reason the Licensor fails to accept this order in writing, any conduct by the Licensee which recognizes the existence of this order, including but not limited to acceptance of delivery of the items set forth in this order, payment of fees owed to Licensor for this order or uses the software in any way shall constitute acceptance of the Licensor order and all of its terms and conditions. Any terms proposed by Licensee which require acceptance of the Licensor in order to add to or, vary from or conflict with these Terms and Conditions are hereby rejected by the Licensor unless agreed to in writing by the Licensor.

### PRICES

The prices set forth on the reverse side are based upon the quantity and type of Software licensed to the Licensee. Clerical errors made by Licensor are subject to correction.

### TERMS OF PAYMENT

Terms of Payments on any approved order are net 30 days from date of invoice unless otherwise specifically stated on the reverse side thereof. Interest accrues on overdue invoices at the rate of 1% per month from the original due date of the invoice or the maximum amount allowed by law. Extended terms waiving interest charges must be arranged prior to shipment and approved by Licensor. All purchase orders are accepted subject to, and the obligation of Licensor to make deliveries is subject to, the right of Licensor to require of the Licensee payment of all or any part of the purchase price in advance of delivery or to make shipments C.O.D. If the Licensee fails to make advance payment when requested by Licensor, or if the Licensee is or becomes delinquent in the payment of any sum due to Licensor (whether or not arising out of the sales order) or refuses to accept C.O.D. shipments, then Licensor shall have the right, in addition to any other remedy to which it may be entitled in law or in equity, to cancel the sales order, refuse to make further deliveries, and declare immediately due and payable all unpaid amounts of goods previously delivered to the Licensee. Each shipment shall be considered a separate and independent transaction and payment thereof shall be made accordingly. All payments shall be made in US dollars and are nonrefundable.

### LICENSE

Terms of the Software are set forth in the End User License Agreement accompanied with or contained in the Software.

### RELEASE OF INFORMATION

Neither party shall publish, distribute, or use any information developed under or about the existence of this Purchase Order, or use the other parties name (or the name of any division, affiliate or subsidiary thereof), logo, trademark, service mark, or trade dress for the purpose of advertising, making a news release, creating a business reference, creating a website content or for products or service endorsement without prior written approval of the other party.

### OPEN SOURCE SOFTWARE

The Software is made up of many software modules that were written, patented and/or copyrighted separately. The copyright and licensing term for each component is indicated in the source code for each module. Some of the modules in the Software are programs governed by the GNU General Public License (GPL) found at [www.gnu.org/licenses/gpl.txt](http://www.gnu.org/licenses/gpl.txt).

### SHIPMENTS

All shipments are, unless otherwise specifically provided, F.O.B. place of Licensor's dock. The cost of packaging for domestic shipment is included in the quoted price. Where special domestic, export or MIL Standard packing is specified, involving greater expense, a charge will be made to cover such extra expense. All claims for breakage and damage, except on parcel post shipments, should be made to the carrier but Licensor will render all possible assistance in securing satisfactory adjustment to such claims. Claims against parcel post shipments should be communicated immediately to the factory for adjustment. Licensor assumes no responsibility for delay, breakage, or damage after having made delivery in good order to the carrier, except for parcel post shipments. Shipments shall be made in the manner and by the carrier requested by the Licensee, but where questions arise concerning suitability of carriers for handling specific instruments, the decision of Licensor must be accepted.

### DELIVERY

The scheduled shipping or delivery date is our best estimate of the time the order will be shipped from our factory and we assume no liability for loss, damage, or consequential damages due to delays.

### TAXES

Federal, state or local excise, sales or use taxes shall be paid by the Licensee.

### PATENTS

Licensor shall defend any suit or proceeding brought against the Licensee so far as based upon an assertion that the Software, or any part thereof, furnished under this order constitutes a direct infringement of any United States patent having a claim or claims covering solely the Software itself, or any part thereof, or the normal use for which such Software was designed, if notified promptly in writing and giving authority, information and assistance (at Licensor's expense) for the defense of same, and Licensor shall pay all damages and costs awarded therein against the Licensee. In case said Software, or any part thereof, is enjoined, Licensor shall at its own option and at its own expense, either (1) procure for the Licensee the right to continue using said Software, (2) replace the same with a non-infringing Software, (3) modify it so it becomes non-infringing, or (4) remove said Software and refund the purchase price and transportation costs thereof. The foregoing states the entire liability of Licensor for patent infringement by said Software thereof. Licensor will have no liability for any infringement claim arising out of or relating to (i) the combination of any product provided by Licensor with a product not manufactured, supplied, required or recommended by Licensor and the infringement would not have occurred but for such combination; (ii) the modification of a product provided by Licensor that is not made or recommended by Licensor and the infringement would not have occurred but for such modification; (iii) changes made to a product provided by Licensor based upon design specifications or instructions provided to Licensor and the infringement would not have occurred but for such design specifications or instructions; or (iv) the continued allegedly infringing activity by Licensee after being notified thereof or after being informed of modifications that would have avoided the alleged infringement.

### DESIGN RIGHTS RESERVATION

Licensor acknowledges and agrees that by the acknowledgement or acceptance of this Agreement, Licensor does not relinquish, sell, transfer, or in any way release any of the designs, design drawings or data, or any other information or rights relating to the subject matter of this order. Any license under or title to such designs, data, information, or other rights must be the subject matter of a separate contract to be valid or binding on Licensor and anything in the order to which this acknowledgement or acceptance relates to the contrary is hereby expressly rejected and not accepted.

### WARRANTY

Licensor warrants that the magnetic media on which the Software is recorded and any documentation provided with the Software are free from defects in materials and workmanship under normal use. Licensor further warrants that the Software will perform substantially in accordance with the specifications set forth in the documentation provided with the Software.

The limited performance warranties set forth herein are for a period of sixty (60) days from the date the Software is delivered to the Licensee. All claims must be made in writing and received by Licensor within the sixty (60) day period.

Licensor does not warrant the functions contained in the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error free. The limited performance warranties do not cover (a) any media or documentation that has been subjected to damage or abuse by the Licensee, its agents or employees, or any end user of Licensee, or (b) any copy of the Software that has been altered or changed in any way by Licensee, its agents, employees or any end user of Licensee. Licensor is not responsible for problems caused by changes in or modifications to the operating characteristics of any hardware or operating system for which a copy of the Software is provided. Licensor also is not responsible for problems that occur as a result of the use of the Software in conjunction with non-Licensor software or with hardware which is incompatible with the version of the Software provided.

Licensor shall not be liable for any failure or delay in performance resulting from compliance by Licensor with any laws, orders, regulations, acts, instructions or priority requests of any national, state, local, or municipal government (whether of the United States or of any other country) or any department or agency thereof, or any civil or military authority, or from acts of war, civil disorder, flood, fire, or other disasters, strikes or labor disputes or from any other factors beyond its control.

Version 02/2014

### GOVERNING LAW

THESE TERMS AND CONDITIONS, ANY STATEMENTS OF WORK, AND ANY SALE OF SOFTWARE HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN ORANGE COUNTY, CALIFORNIA, AND LICENSEE CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. LICENSEE FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen. The rights and remedies provided Licensor under these Terms and Conditions are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or inequity.

### ARBITRATION

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including, but not limited to, statutory, common law, intentional tort and equitable claims) arising from or relating to the Products, the interpretation or application of these Terms and Conditions or any Statement of Work or the breach, termination or validity thereof, the relationships which result from these Terms and Conditions or any Statement of Work (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto), (collectively, a "Claim") WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. Arbitration will be conducted pursuant to the Rules of the American Arbitration Association. Neither Seller nor Purchaser will have the right to litigate that Claim in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties involved. Further, Licensee will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim. Notwithstanding any choice of law provision included in these Terms and Conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). The arbitration will take place exclusively in Irvine, California. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own cost of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to Licensor arising out of the Software will be exclusively litigated in court rather than through arbitration.

### MISCELLANEOUS

This Agreement is a licensing and services agreement and not a sale of goods. This Agreement shall not be subject to the United Nations Convention on Contracts for the Sale of Goods. No action arising out of or related to this Agreement may be brought more than one (1) year after the claiming party knew or should have known of the cause of action. Subject to the restrictions in assignment contained herein, these Terms and Conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of this Agreement or any Statement of Work will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. The relationship between Licensor and Licensee is that of independent contractors and not that of employer/employee, partnership or joint venture. If any term or condition of this Agreement or a Statement of Work is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or conditions hereof or thereof or the whole of this Agreement or the applicable Statement of Work. Notices provided under this Agreement will be given in writing and deemed received upon the earlier of actual receipt or three (3) days after mailing if mailed postage prepaid by regular mail or airmail or one (1) day after such notice is sent by courier or facsimile transmission. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to thereafter enforce such rights. Neither party, including its Affiliates, shall employ or otherwise engage an employee of the other party during, and for a period of six (6) months following any termination of, the particular employee's employment with the other party. Should a party violate this provision, the violating party shall pay the other party one hundred percent (100%) of the former employee's annual base salary with the non-violating party as damages for the violation. Such payment shall be the non-violating party's sole remedy with respect to the violating party. This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.