

GENERAL TERMS OF SALE

1. DEFINITIONS

- 1.1. "Buyer" means the person, firm, or company specified in the Order, Quote, or SOW as purchasing Products, Services, and/or Software.
- 1.2. "Confidential Information" means information received by the receiving party from the disclosing party which (a) is marked as "Confidential" or "Proprietary"; (b) if first disclosed orally or by visual observation is identified as confidential or proprietary at the time of such disclosure, and is reduced to writing and identified as confidential or proprietary by the disclosing party within thirty (30) days after such disclosure; or (c) would reasonably be considered confidential and/or proprietary under the circumstances surrounding disclosure.
- 1.3. "Customer" means any Buyer, including any distributor, system integrator, and or end user of the Products, Services, and/or Software.
- 1.4. "Deliverables" means any work product, reports, or other deliverables developed by Seller and provided to Buyer pursuant to any Order, Quote, or SOW under these Terms.
- 1.5. "Order" means a purchase order issued by Buyer to Seller hereunder for the purchase and/or use of the Products, Services, and/or Software.
- 1.6. "Products" means those products or goods described or specified in the Order, Quote, or SOW.
- 1.7. "Seller" means Nitek International specified in the Order, Quote, or SOW.
- 1.8. "Seller Materials" means any and all processes, formulas, tools, ideas, concepts, methodologies, software, know-how, business practices, trade secrets, object code, source code, documentation, information and ideas developed by Seller or its licensors, and all intellectual property rights therein.
- 1.9. "Services" means the specific tasks, functions, responsibilities, Deliverables and other professional services to be provided by Seller to Buyer under these Terms, and as described in an applicable Order, Quote, or SOW.
- 1.10. "Software" means the computer programs, operating systems, interfaces, software-as-a-service, applications or other software as specified in an Order, Quote, or SOW.
- 1.11. "SOW" means a document between Seller and Buyer that defines certain Services and Deliverables to be provided by Seller to Buyer under these Terms.
- 1.12. "Special Order Product" means any Product (i) that Seller develops, produces, and/or procures for Buyer that is nonstandard, (ii) is not readily saleable by Seller to other customers, (iii) that is custom made, modified, altered, or includes special features for Buyer, (iv) stocked specially to meet Buyer's requirements, or (v) identified as non-cancelable or non-returnable in writing.
- 1.13. "Terms" means these general conditions of sale.

2. SCOPE OF AGREEMENT. These Terms govern the purchase and use of Products, Services, and/or Software by Buyer from Seller and, together with each Order, Quote, or SOW, constitutes the entire, integrated agreement between the parties with respect to the subject matter of these Terms. If a conflict arises between these Terms, an Order, Quote, or SOW, these Terms shall prevail unless otherwise expressly agreed to by the parties. Notwithstanding the foregoing, in the event that Seller and Buyer are parties to an existing, mutually executed agreement that governs the purchase of Products, Services, and/or Software ("Existing Agreement"), the Existing Agreement shall be deemed to supersede these Terms for the specific purpose set forth therein. If Buyer is accepting these Terms on behalf of another person or other legal entity, Buyer represents and warrants that Buyer has full authority to bind that person or legal entity to these Terms. Seller objects to,

and the parties shall not be bound by, any additional or different terms in any purchase order, portal, or other communication from Buyer and these Terms prevail over any preprinted terms and conditions contained in any order or other document. Such additional or different terms shall be deemed a material alteration of these Terms and deemed void and unenforceable unless otherwise agreed to in a signed writing by both parties. The parties expressly disclaim the application or incorporation of the Uniform Commercial Code to any Order or SOW. Buyer's or its Customer's acceptance or use of the Products, Services, and/or Software, or execution of a Quote or SOW or placement of an Order, constitute acceptance of these Terms.

3. ORDERS. Seller has the right, in its sole discretion, to accept or reject any Order. Seller will accept or reject any Order within a reasonable time frame; however, Seller's failure to timely respond shall not be deemed acceptance of an Order. Additionally, the parties may issue associated and/or related Quotes or enter into SOWs during the course of these Terms. Any change requested by the Buyer to the Product specifications, quantities, destinations, shipping schedules, Services, Software, or any other aspect of the scope of an Order, Quote, or SOW must be agreed to in writing by the parties and may result in a price and/or delivery adjustment as determined by Seller. Seller reserves the right to implement a minimum order size, with pricing and associated charges being subject to change, at Seller's discretion, based on the size of such Order.

4. SPECIAL ORDER PRODUCTS. If Buyer orders any Special Order Products, Buyer acknowledges and agrees it cannot cancel any Order of Special Order Product without prior written authorization by Seller.

5. SHIPPING. Unless otherwise agreed to in writing by the parties, Buyer shall be responsible for shipping charges which include all applicable freight, shipping, insurance, and handling charges for an Order. Shipping dates or other applicable performance dates are estimated on the basis of immediate receipt by Seller of Buyer's Order. Delivery dates mentioned in any Quote, SOW, Order, order confirmation or any other form of communication, are approximate only and not of any contractual effect, and time for delivery shall not be made of the essence by notice. Seller shall not be under any liability to Buyer in respect of any delay in delivery howsoever arising. In the event Buyer, verbally or in writing, confirms a delivery date with Seller but is subsequently unable to accept delivery, Buyer will reimburse Seller for any costs and expenses incurred by Seller for such delivery. No delay in the shipment or delivery of any Products relieves Buyer of its obligations under these Terms. Seller reserves the right to make partial shipments without liability or penalty. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of an Order.

6. SERVICES. The Services requested by Buyer shall be specified in an Order, Quote, or SOW. If applicable, Buyer will provide Seller with reasonable access to its system and/or premises as required to provide the Services. Seller may use sub-contractors to perform its contractual obligations under an SOW or Order. If Seller uses subcontractors, Seller will be solely responsible for ensuring that they comply with their respective contractual requirements. Buyer shall not supervise or direct the performance of any Seller subcontractors.

6.1. Performance Delays. If Seller's performance of any of its obligations under these Terms, Order, Quote, or SOW is prevented or delayed by Buyer: (a) Seller shall without limiting its other rights or remedies under these Terms or as otherwise provided by law or equity, have the right to suspend performance of the Services; and (b) Buyer shall be liable for any costs and expenses sustained or incurred by Seller therein. Without limiting the foregoing, completion times referenced in an Order, Quote, or SOW are only estimates. To the extent that certain Services are to be provided by a third party on behalf of Seller, Seller shall not be liable for any performance delays or failures caused by such third party.

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- 6.2. Change Orders.** Either party may request a change to an Order, Quote, or SOW by submitting a written request to the other party (“Change Order”). No changes to a SOW or Order, including performance date or any other aspect of the scope will be binding on the parties unless expressly stated in a mutually executed written Change Order, and where such changes affect Seller’s time or cost of performance, an equitable adjustment in estimated shipping/performance date or price, or both, will be made.
- 6.3. Suspension.** Seller may immediately suspend, without liability, performance under any Order, Quote, or SOW if Buyer, in Seller’s reasonable opinion, fails to comply with any of these Terms, an SOW or an Order, Buyer’s financial position changes or becomes a credit risk, or if any unsafe or unsanitary conditions or hazardous materials are encountered on the jobsite in performance of the Services.
- 7. RECOMMENDATIONS.** Buyer acknowledges and agrees that any drawings, designs, suggestions, recommendations, or advice as to any products, software, or services (collectively, “Recommendation”) are intended for informational purposes only and are provided “as is” and for informational and conceptual purposes only. Buyer acknowledges that in the event it follows any such Recommendation, it does so at its own risk and agrees that Seller will not be liable for any damage, claims, liabilities, or losses suffered by Buyer or any third party, directly or indirectly, due to Buyer following any Recommendation provided by Seller. Any legal or regulatory compliance obligations shall remain Buyer’s sole responsibility, and nothing herein is intended to shift such burden from Buyer to Seller.
- 8. PRICE.** Prices on Seller’s website, catalogs or in Seller quotes are subject to change without notice. Unless otherwise extended in writing by Seller, all prices listed on a Seller quote will be deemed to expire and become invalid upon the expiration date listed in the applicable Quote, provided however, Seller reserves the right to update its quote to Buyer in the event of a material exchange rate fluctuation, adjustments in commodity pricing (e.g., copper, aluminum, steel), tariff or duties increases, freight, importation cost increases, or supplier price increases. In such event, Seller will provide an updated quote and will not ship any Product or provide Service or Software until an Order with the correct price is received from Buyer. Any mathematical, stenographic, technical, or clerical errors are not binding on Seller. Buyer shall pay all applicable transaction taxes, including sales and use taxes, value added taxes, goods and services taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by Buyer under these Terms (collectively, “Transaction Taxes”). Such Transaction Taxes shall be due whether or not included on the invoice, Order or SOW. Except where specifically stated by Seller, prices shown do not include any Transaction Taxes. Buyer will provide proof of any exemption from Transaction Taxes to Seller at least fifteen (15) business days before the due date for paying an invoice. If Seller does not collect the required Transaction Taxes from Buyer, but is subsequently required to remit the Transaction Taxes to any taxing authority, Buyer will promptly reimburse Seller for the Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to the fault of Seller. Each party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
- 9. PAYMENT.** Buyer agrees to pay the amounts set forth on each Order, SOW, or invoice within thirty (30) days from invoice date, unless otherwise agreed to in writing by the parties, without any right to offset, counterclaim, holdback or deduction. Buyer must provide notice of any payment dispute within ten (10) days of the date of the invoice or Buyer waives any right to dispute such invoice; however, any such dispute shall not delay timely payment to Seller. Any invoices issued by Seller are deemed to include any special terms identified on the applicable quote or SOW as if fully incorporated within the invoice. Seller reserves the right to require guarantees, security or payment in advance of shipment from any Buyer. In the event Buyer fails to pay the total purchase price within the time indicated on the face of the invoice, the entire outstanding balance due to Seller on all invoices shall be accelerated and become due in full immediately and the maximum allowable charge and/or interest allowed by applicable laws shall be applied to all past due accounts commencing from the due date of the invoice until paid. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to recover reasonable attorneys’ fees and/or other expenses in collecting the purchase price or otherwise enforcing or successfully defending these Terms. Seller may set off any amount due from Buyer to Seller from any amounts due to Buyer. Buyer agrees to give Seller at least seven (7) business days’ notice if its financial position changes or it becomes a credit risk, intends to make an assignment for the benefit of creditors, file for relief under the U.S. Bankruptcy Code, or seek the appointment of a receiver. In which case, in addition to any other remedies available to Seller, all amounts due to Seller shall be accelerated and become immediately due and payable. In addition to any remedies that may be provided under these Terms or applicable state law, Seller may exercise any and all reclamation rights and/or suspend or terminate any Order or SOW with immediate effect if Buyer: (i) fails to pay any amount owed to Seller when due, including but not limited to amounts owed under these Terms; (ii) has not otherwise performed or complied with any obligation owed to Seller, including but not limited to any obligation under these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, to the extent permissible under law.
- 10. RETENTION OF TITLE.** The Buyer agrees title to the Products shall remain vested in the Seller and shall not pass to the Buyer until the total purchase price for the particular Order has been paid in full and received by the Seller. Until title to the Products has passed, the Buyer agrees the Seller has the authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Products; the Buyer shall store the Products in a manner reasonably satisfactory to the Seller; and the Buyer shall insure the Products to their full replacement value, and arrange for the Seller to be noted on the policy of insurance as the loss payee. Irrespective of whether title to the Products remains vested in the Seller, risk in the Products shall pass to the Buyer upon delivery.
- 11.RETURNS.** Customer agrees that any return for warranty, repair, credit, or any other reason must be pre-approved by the Seller. The Seller’s Product Return Policy is modified from time to time and is published at www.nitek.net. Notwithstanding anything to the contrary, Services and Software may not be returned.
- 11.1. Return for Credit.** Customer can return working Products within thirty (30) days of receipt. Any Products returned must be current products listed on the most recently published Seller Price List and be in new, working, and saleable condition, include all manuals and accessories, and be returned in the original factory packaging. Credit returns are subject to a restocking charge of up to thirty percent (30%). Additional restocking fees may be applied depending on the condition of the Products returned. Credit may not be issued if Seller determines returned Products do not meet the aforementioned conditions.
- 11.2.Return Material Authorization (RMA).** Customer can return non working Products that fall within the Seller’s Product Warranty as outlined in Section 12. Customer must contact Seller Customer Service and complete and return the required RMA form(s) for approval and instructions of returning qualified Products.
- 12. PRODUCT WARRANTY.** Seller warrants that all Products, Services, and Software sold to the original Buyer conform to all applicable specifications, is of good workmanship and quality, free of all defects, liens and encumbrances, and fit for the ordinary, published purposes for which the Products, Service or Software is used. Seller does not warrant Products, Services, and Software damaged from environmental exposure or damages caused by modification/

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alteration, accident, misuse, improper care or repair, negligence, or improper installation. Seller warrants products for the following periods:

12.1. All Passive Products, those Products not requiring power to operate and function, including passive UTP and Surge Protection devices, include a Limited Lifetime Warranty.

12.2 All Active Products, those products requiring power to operate and function, including all UTP and Analog Fiber devices, include a Two (2) Year Limited Warranty.

12.3 All Etherstretch Branded Products, including Coaxial, UTP, and Fiber Media Converters, include a Limited Lifetime Warranty.

13. TERMINATION.

13.1. In addition to and subject to Seller's rights set forth in Section 9, in the event of any material breach of these Terms, Order, or SOW by either party, the non-breaching party may cancel the applicable Order or SOW by giving thirty (30) days' prior written notice thereof; unless the party in breach has cured the breach prior to the expiration of the thirty (30) day period.

13.2 In the event Seller or Buyer terminates an Order, Buyer shall not be entitled to any refund or credit of fees paid or payable hereunder. Payment of invoices for Products and Software already delivered and Services already performed will be responsible for the fees and costs described in Section 3 and 4 above. In the event of termination of an Order, all licenses granted therein shall also terminate. Subject to the limitations and other provisions of these Terms any provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of these Terms.

14. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR LOST REVENUE OR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, EVEN IF THE PARTIES HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE; FURTHERMORE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY'S LIABILITY ON ANY CLAIMS FOR DAMAGES OR CHARGES ARISING OUT OF OR CONNECTED WITH THESE TERMS OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS, SOFTWARE, OR SERVICES SHALL EXCEED THE AMOUNT ACTUALLY PAID FOR THE PRODUCTS, SOFTWARE, AND SERVICES GIVING RISE TO THE CLAIM.

15. FORCE MAJEURE. Seller shall not be liable for any failure to perform its obligations under these Terms, SOW, or Order, as well as canceling a quote resulting directly or indirectly from, or contributed to or by acts of God, acts of Buyer, acts of terrorism, civil or military authority, epidemic or pandemic of contagious disease, fires, strikes or other labor disputes, accidents, floods, war, riot, inability to secure material or transportation facilities, hacking or other malicious attack, dissolution of the applicable manufacturer's business, acts or omissions of carriers, or any other circumstances beyond Seller's reasonable control.

16. COMPLIANCE WITH LAW. Each party shall comply with all applicable laws, statutes, rules and regulations, including but not limited to, all applicable export and import, anti-bribery and anti-corruption, anti-money laundering, anti-human trafficking and slavery, environmental protection, data privacy, trade sanctions, and health and safety laws and regulations. To the extent permitted under applicable law, Buyer will indemnify and hold Seller harmless for any damages arising from its violation of any such laws, statutes, rules, and regulations. To the extent Buyer resells any Products to another

entity or person, Buyer agrees to comply with all applicable laws and regulations that apply to sellers of products, including applicable imports, exports, customs, bribery, anti-slavery, and environmental protection laws. Furthermore, Buyer will not use, transfer or access any Products, Software, or Services for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the manufacturer and the U.S. Government by regulation or specific license. If Seller receives notice that Buyer is or becomes identified as a sanctioned or restricted party under applicable law, Seller will not be obligated to perform any of its obligations under these Terms or an SOW or Order if such performance would violate the applicable sanctions or restrictions. Equipment, systems, or services provided by Seller may incorporate, include, or use telecommunications equipment, systems, parts, components, elements, or services that have sourcing restrictions depending on the intended use under section 889 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. No. 115- 232).

17. PRIVACY. Each party must comply with all applicable laws governing the collection, use and disclosure of personal data (as defined by applicable data protection laws) and must obtain any required consents with respect to the handling of personal data. Buyer acknowledges that Seller is headquartered in the United States and that data collected by Seller from Buyer in connection with these Terms may, subject to the terms of these Terms, be transferred into and processed in the United States or other locations and expressly consents to such transfer and processing.

18. LAW. VENUE. These Terms shall be governed according to the substantive laws of the State of Illinois, U.S.A. without regard to principles of conflicts of law thereof and shall not be governed by the U.N. Convention on the International Sale of Goods. If any dispute or controversy shall arise with respect to these Terms, the parties hereby consent to the exclusive jurisdiction and venue of the state or federal courts located in Chicago, Illinois, and agree that they shall not contest or challenge the jurisdiction or venue of such courts. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING IN OR CONNECTION WITH THESE TERMS AND THE TRANSACTIONS CONTEMPLATED HEREIN.

19. GENERAL. These Terms are drafted without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. No amendments, modifications, waivers, rescission, or termination of these Terms can be made through the parties' course of dealings and no such change can be made except in a single writing signed by the parties hereto. Failure by a party to exercise any right or remedy under these Terms will not be deemed a waiver of such right or remedy unless in writing signed by the other party, nor shall any waiver be implied from the acceptance of any payment. No waiver by a party of any right shall extend to or affect any other right, nor shall a waiver by a party of any breach extend to any subsequent similar or dissimilar breach. Buyer may not assign these Terms, an Order or SOW, by operation of law or otherwise, without the express written approval of Seller. Any attempt to assign or transfer all or any part of these Terms without first obtaining that written consent will be void and of no force or effect. Notwithstanding the foregoing, these Terms shall be binding upon, and inure to the benefit of, the permitted successors and assigns of each party. Any provision of these Terms that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be limited or eliminated to the minimum extent required by that jurisdiction, and the remaining provisions of these Terms will remain in full force and effect. Buyer acknowledges that the terms or content in any hyperlinked document, as amended from time to time, are incorporated in these Terms by reference and that it is Buyer's responsibility to review the terms or content in the hyperlinks referenced in these Terms. All notices under these Terms must be in writing (e.g., e-mail or physical mail) and addressed to the other party at its address set forth in the Order.