

Mercury Systems, Inc.
Terms & Conditions of Sale

The following terms shall govern the sale of Mercury Systems, Inc. ("Mercury") products that are ordered by customer ("Buyer"), including all hardware (the "Hardware") and software, including firmware and associated documentation (the "Software"), and engineering ("NRE") or professional services ("the Professional Services") as reflected in Buyer's purchase order (collectively, the "Products").

The Software is licensed, not sold, by Mercury. The terms of the Mercury Software License Agreement ("License Agreement") exclusively govern the use of all the Software provided by Mercury to its Buyers. Acceptance of the License Agreement is required as a condition to proceeding with these terms and conditions, the license transaction and the installation and use of the Software.

Professional Services are provided subject to the terms and conditions of the Mercury Professional Services Agreement.

Any and all terms and conditions included in any subsequent communications from Buyer (e.g. in purchase orders) are not accepted by Mercury unless explicitly agreed in writing. If Buyer submits a purchase order or other documentation to evidence that it wishes to proceed with the transaction that is the subject of a valid Mercury quotation, Buyer is deemed to have accepted these Terms & Conditions of Sale, the License Agreement, the Professional Services Agreement, and the Mercury quotation (collectively, "Agreement").

Copies of the License Agreement and the Professional Services Agreement may be viewed at:
<http://www.mc.com/terms-and-conditions/default.aspx>.

1. Delivery of Hardware.
Delivery shall be FOB Origin (where the origination and destination points are within the United States) or Ex Works (Incoterms 2010) Mercury's facility of manufacture (for shipments where either the origination or destination point is outside of the United States). Title and risk of loss shall pass to Buyer upon delivery to the carrier. Unless otherwise directed and agreed upon with Buyer in writing, the Hardware will be shipped uninsured. Dates of shipment are estimates only and Mercury shall not be liable for any loss or damage by reason of any delay in delivery or for causes beyond Mercury's control, or for failure to give notice of delay in delivery. Buyer shall be responsible for all transportation charges, transit insurance (if applicable), and handling charges, if any.
2. Taxes.
Buyer shall be responsible for all taxes on the sale or use of Products supplied to Buyer, except taxes based on Mercury's income.
3. Payment Terms.
With approved credit, terms are net thirty (30) days from date of shipment by Mercury. Otherwise, terms are cash in advance. Buyer shall pay interest on amounts not paid when due, at the highest lawful rate.
4. Hardware Warranty.
 - A. Mercury warrants to the original Buyer only that Hardware will, at the time of delivery, conform to Mercury's then current documentation supplied with the Hardware. Mercury further warrants to Buyer that Hardware will be free from defects in material and workmanship for the period of one (1) year from the date of shipment of Hardware (the "Warranty Period"). The Warranty Period shall commence upon delivery to carrier as stated in Section 1 above.

- B. Mercury will, at its sole option, repair or replace any Hardware found by Mercury to be defective if notified, in writing within the Warranty Period, and the defective Hardware is returned to Mercury prepaid. Buyer must first obtain shipping instructions from Mercury prior to returning any defective Hardware under this warranty. All repaired/replaced Hardware is warranted for ninety (90) days or the remaining unexpired term of the original warranty, whichever is longer.
- C. The above warranty is a limited warranty and will apply only if Mercury in good faith determines that the Hardware has not been: (i) altered/modified, other than by Mercury; (ii) improperly used or installed; (iii) used in a manner other than as specified by Mercury; or (iv) caused by external factors such as, but not limited to, failure of electrical power.
- D. DISCLAIMER OF WARRANTY
THE FOREGOING LIMITED EXPRESS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY OF MERCURY AND ITS SUPPLIERS WITH RESPECT TO THE HARWARE AND ITS USE, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND MERCURY AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- E. Increased and/or additional Technical Support Service programs can be added before the end of the warranty/service period by Buyer purchasing the appropriate level of service from Mercury. If there is any gap in service coverage, (a) Mercury reserves the right to verify operational status and condition of the Hardware at Buyer's expense prior to commencement of a new Technical Support Service agreement, or (b) the effective date of service shall be the original Mercury ship date of the purchased Hardware.
5. Substitutions and Modifications.
Mercury reserves the right to make substitutions or modifications in the specifications or design of any Hardware provided that such changes do not adversely affect product form, fit, function or performance.
6. Cancel/Reschedule.
- A. Mercury Standard Hardware and Software
Buyer may cancel any purchase order or any part thereof for Mercury standard Hardware (excluding chassis systems) and Software, by giving Mercury written notice more than sixty (60) days prior to the scheduled delivery date of the Hardware or Software and shall pay a fifty percent (50%) cancellation fee.
- All purchase orders for chassis systems are non-cancellable. All purchase orders for Hardware or Software which have been designated as being end-of-life by Mercury are non-cancellable.
- Buyer may reschedule any purchase order or any part thereof for Mercury standard Hardware and Software one time only, by giving Mercury written notice more than sixty (60) days prior to the original scheduled delivery date of the Hardware or Software and shall pay, as applicable, either: (i) a twenty-five (25%) percent reschedule fee for orders rescheduled for delivery between sixty-one (61) and ninety (90) days after the original scheduled delivery date; or (ii) a ten (10%) percent reschedule fee for orders rescheduled for delivery between one (1) and sixty (60) days after the original scheduled delivery date. Rescheduling more than ninety (90) days after the original scheduled delivery date is not permitted, unless otherwise mutually agreed in writing.
- B. Custom Products and Third Party Products
Buyer may cancel any purchase order for custom Products or third party Products by giving Mercury written notice more than ninety (90) days prior to the scheduled delivery date of the custom Products or

third party Products. In the event that Buyer cancels a purchase order for such custom Products or third party Products, then Buyer shall pay a 10% percent cancellation charge. In addition, Buyer will be invoiced at the time of cancellation for all work completed on such custom Products or third party Products received or non-cancellable by Mercury, for all work in progress, and for any of its suppliers' cancellation charges, at the prices quoted by Mercury.

Rescheduling of the delivery date of purchase orders for custom Products or third party Products is not permitted, unless otherwise mutually agreed in writing.

C. Professional Services

Buyer may cancel or reschedule any purchase order for Professional Services, by giving Mercury written notice more than sixty (60) days prior to the scheduled completion date of the Professional Services. Buyer will be invoiced at the time of cancellation or rescheduling for all work completed at that time and for any work in progress at the prices quoted by Mercury, plus an early cancellation charge, not to exceed 10% of the value of the purchase order to facilitate the cancellation or rescheduling of the work.

Mercury reserves the right, in the case of a reschedule, to provide a revised quotation for any or all of the work still to be completed and to produce a revised project plan. Completion of the purchase order would only commence upon acceptance of revised quotation and project plans. Any cancellation charges, revised prices and project plans will be provided to Buyer within one month of the formal notice.

7. Termination.

Either party may terminate this Agreement upon written notice to the other if the other party becomes insolvent, files a petition in bankruptcy, or fails to perform a material term or obligation of this Agreement and such failure to perform continues for a period of thirty (30) days after receipt of written notice of such breach. Failure to pay any monies due under this Agreement is considered a material breach. Termination shall not exclude other remedies each party may have for failure to perform its obligations hereunder.

8. Patent and Copyright.

Mercury will, at Mercury's own expense, defend any action brought against Buyer to the extent that such action is based on a claim that any Mercury proprietary Hardware, if used as authorized in this Agreement, infringes a United States patent or copyright. Mercury will pay all costs and damages finally awarded by a court of competent jurisdiction, provided that Mercury is given prompt written notice (by certified mail) of such claim and, all required information, reasonable assistance and sole authority and control to defend, negotiate or settle the claim. Mercury has the right, at Mercury's sole option, either to obtain the right to continue using the Hardware, or replace or modify the Hardware so that it is no longer infringing, or if such remedies are not reasonably available to Mercury, Mercury will grant Buyer a reasonable credit and accept return of the Hardware. Mercury will not have any obligations or liability under this clause if the alleged infringement arises from (i) use or combination of the Hardware with other products, devices or software not supplied by Mercury, or (ii) Mercury's compliance with Buyer's designs, specifications or instructions, or (iii) modifications or alterations made by any party other than Mercury, or (iv) use of the Hardware in a manner not reasonably foreseeable. **THE FOREGOING STATES MERCURY'S ENTIRE LIABILITY AND OBLIGATION FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. MERCURY DISCLAIMS ALL OTHER LIABILITY FOR THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

Buyer agrees to indemnify and hold Mercury harmless from any claims, suits, proceedings, losses, liabilities, damages, costs and expenses (inclusive of Mercury' reasonable attorneys' fees) arising from (i) use or combination of the Products with other products, devices or software not supplied by Mercury, or (ii) Mercury's compliance with Buyer's designs, specifications or instructions, or (iii) modifications or alterations made by any party other than Mercury, or (iv) use of the Products in a manner not reasonably foreseeable. Mercury shall

have the right to participate, at its expense, in the defense of any claim covered under this section with counsel of its own choosing.

9. INTELLECTUAL PROPERTY OWNERSHIP.

Buyer understands and agrees that Mercury shall solely and exclusively own and have all right, title and interest in and to all technical data, software, both object and source code, trade secrets, mask works, processes, ideas, know-how, documentation, concepts, inventions, improvements, discoveries and any other tangible or intangible property (collectively, the "Information") developed or prepared by Mercury pursuant to or in anticipation of, a Buyer purchase order and all related copyrights, patents, trade secret rights, mask work rights and other intellectual property rights.

Without limiting the generality of the foregoing, Buyer agrees that all records papers, reports, descriptive and pictorial material, printed or written technical information, drawings, reproductions thereof, samples, models, and tools supplied or produced by Mercury during performance of the work under this Agreement with Buyer shall be considered Mercury's property, the nature and contents of which shall not be disclosed to others without written permission from Mercury, and shall be surrendered by Buyer to Mercury upon completion of the related portions of such work, as may be requested.

10. Limitation of Liability.

Circumstances may arise where, because of a default on Mercury's part or other liability, Buyer is entitled to recover damages from Mercury. In each such instance, regardless of the basis on which Buyer may be entitled to claim damages from Mercury, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Mercury is liable for no more than the amount of any other actual direct damages up to the lesser of charges for the product or service that is the subject of the claim or two-hundred and fifty thousand dollars (\$250,000). Notwithstanding the foregoing, in no event, however, does Mercury assume any responsibility or liability for any damages whatsoever occasioned by or resulting from the manufacture, lease, sale, license or use of Buyer's products.

This limitation of liability also applies to third party suppliers. It is the maximum for which they and Mercury are collectively responsible. The third party suppliers are an intended beneficiary of these limitations and disclaimers and the limit of liability for Mercury and its third party suppliers is not cumulative.

UNDER NO CIRCUMSTANCES IS MERCURY OR ITS SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- (a) LOSS OF, OR DAMAGE TO, DATA;
- (b) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
- (c) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO BUYER.

This Section 10 shall survive any expiration, termination, or cancellation of this Agreement.

11. General.

- A. This Agreement may not be assigned by Buyer without the prior written consent of Mercury, which consent shall not be unreasonably withheld.
- B. All notices relating to this Agreement must be sent by either certified or registered mail, postage prepaid or electronic mail, by a duly authorized representative from Buyer's facility. Each of the parties may communicate with the other by electronic means and such communication is acceptable as a signed writing.
- C. This Agreement supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations. This Agreement may not be modified or waived, in whole or part, except in writing and signed by an officer or duly authorized representative of the party to be bound. This Agreement constitutes the entire agreement between the parties regarding the subject matter herein and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- D. If a dispute or controversy arises regarding this Agreement or a purchase order, the parties will attempt in good faith to settle it amicably or through ADR (Alternative Dispute Resolution) mediation rather than litigation or arbitration. The parties will mutually select the location and ADR entity to mediate the controversy and both agree to cooperate in reaching a settlement. Each party will be responsible for their own expenses but will equally share the costs and expenses of the mediation.
- E. This Agreement shall be governed and construed in all respects by the laws of the Commonwealth of Massachusetts without regard to its choice of law principles and Buyer agrees to submit to the jurisdiction of the courts of Massachusetts (or federal courts) when a dispute arises that the parties cannot settle amicably or through ADR. Any action by either party must be commenced within one (1) year after the cause of action arises, except an action for non-payment may be commenced by Mercury at any time.
- F. Buyer understands and acknowledges that any sale, export or re-export of products, are subject to the laws and regulations of the United States. Mercury products or services that are subject to the EAR may not be exported from the United States in their original form if they will be used for the design, development, manufacture, use or repair of nuclear, biological or chemical weapons, or for rocket systems (including but not limited to ballistic missile, space launch vehicles, sounding rockets) and unmanned air vehicles, (including but not limited to cruise missile systems, target drones and reconnaissance drones), or other missile technology without prior approval from the US Department of Commerce. In addition, Section 744 of the EAR contains other prohibitions against exports, re-exports, and transfers to certain end-users and against certain end uses. Diversion contrary to US law is strictly prohibited. Mercury products and services controlled by the ITAR may not be exported or transferred to foreign persons in the United States or abroad without first obtaining proper export authority from the U.S. Department of State. Mercury products may not be sold, exported or re-exported to any person or entity designated as prohibited or restricted by an agency of the US government. See "Lists to Check" at www.bis.doc.gov for a complete listing. Sales or retransfers of Mercury products or services may not be made to countries prohibited by the U.S. Government. An End Use Statement signed by Buyer may be required prior to shipment. For further information contact Mercury, and see www.pmdtc.state.gov or www.bis.doc.gov. Buyer agrees to indemnify, defend, and hold Mercury and its third party suppliers, harmless from any claims, damages or suits resulting from its failure to comply with this Section 11. F.

- G. To ensure compliance with the International Traffic in Arms Regulations (ITAR), Buyer must notify Mercury's Legal Department for instructions prior to providing Mercury any requirements, items or technical data subject to the ITAR. All purchase orders or requests for quotation that involve Buyer ITAR-controlled items or technical data must include the following statement, in a conspicuous format, on the item or technical data supplied to Mercury:

“ITEMS OR TECHNICAL DATA SUBJECT TO ITAR”

Mercury disclaims any liability whatsoever that may result from Mercury's inadvertent disclosure of Buyer's ITAR-controlled items or technical data to a "foreign person" (as that term is defined in the ITAR) resulting from Buyer's failure to abide by the foregoing requirement.

- H. The provisions of this Agreement are severable and the invalidity of any provision hereof shall not affect the validity of any other provision.
- I. Failure by either party to insist in any instance upon strict performance by the other party of any provision of this Agreement shall not be construed or deemed to be a permanent waiver of such or any other provision of this Agreement. The rights and remedies of the parties are not exclusive and are in addition to any other rights and remedies provided by law, equity or statute.
- J. Neither party shall be responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control.
- K. Mercury and Buyer agree to exclude application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act from this Agreement.