



## TERMS AND CONDITIONS OF SALE

The following policies apply to all purchases from NETMOTION, Inc. (referred to herein as 'seller') or from its representatives or distributors, whether for product, service, engineering or other. The term "Buyer" is used to encompass the actual customer, purchaser (and final owner, if different), as well as all associated persons or entities under the constructive control or influence of Buyer, which may be involved in the selection, order, use or service of Seller's product or services.

- 1. PRICES AND QUOTATIONS**—Price Lists are subject to change without notice. In the event of a price change, the price of equipment on order, but not yet shipped, will remain unchanged. Unless otherwise agreed, written quotes are firm for thirty (30) days from date of quote and are subject to change or termination on written notice anytime. Prices shown in published literature are for general information and are not final quotes or offers to sell. Unless stated in Seller's quote, prices do not include delivery, customer training or service, installation, modification, Buyer's testing or inspection, special documentation, taxes, fees, duties, travel or commissioning. All orders, contracts, terms and conditions, and agreements are subject to final acceptance or rejection by Seller. No penalty clauses will be effective unless approved in writing in advance by Seller. Clerical errors are subject to correction whenever discovered.
- 2. TECHNICAL SPECIFICATIONS**—Product instructions and data supplied are current at the time of their printing. In a continuing effort to improve its products and services, Seller may discontinue certain items or change specifications and designs, as well as prices and policies without notice. Published specifications of products are not guaranteed unless specifically agreed. Verbal orders and changes to orders which Seller receives by voice, telephone, email or fax from Buyer's purchasing agent are deemed valid, as if in original writing, for Purchase Order number, date, item listings, quantities, prices, and delivery requirements.
- 3. TRANSPORTATION EXPENSE**—All products are sold FOB point of shipment. All charges, expenses, fees, duties, taxes, expedite fee(s), and insurance related to the packing or transporting the purchased goods to Buyer's designated site are charged to Buyer. Unless specified by Buyer, Seller will select the means of shipping and routing which it deems reliable and economical, considering the nature of the shipment. Parcels under 70 pounds are generally shipped standard UPS, while larger parcels are generally shipped motor freight or air ride van. Faster deliveries at Buyer's request may use express mail, UPS-Red/Blue, Fed-Ex or other premium services, at Buyer expense.
- 4. DELIVERY**—Shipping dates are quoted in good faith, however, the backlog and availability of labor and materials at time the order is received may effect the completion date. Approximate shipping dates will be provided on request by calling Seller's office that is handling the order. Seller will not be liable for any delay or failure in 1) the performance of orders or contracts, 2) the delivery of shipment of goods, or 3) for any damages suffered by Buyer directly or indirectly, caused by, or in any manner arising from fires, floods, accidents, riots, Acts of God, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, transportation delays, or any other cause or causes (whether or not similar in nature to any of these herinbefore specified) beyond Seller's control. In the event, Seller is unable to perform due to such causes; Seller may terminate the order without any further liability to Buyer.
- 5. RECEIVING INSPECTION**—On receipt of goods, Buyer shall advise Seller of any errors or omissions in the shipment, specifications, or billing within ten (10) days of receipt of such shipment. Failure to make any claim within ten (10) days shall constitute irrevocable acceptance of the product and admission that the product fully complies with all terms, conditions, quantity(s), and specifications. Unless agreed in writing, Seller assumes no responsibility or liabilities for delays or breakage after delivery to the carrier, properly addressed and with Buyer's purchase order number shown. If the container in which the equipment is received shows damage, or, if, upon unpacking, damage to the equipment is discovered, an immediate request shall be made by Buyer to the carrier to perform an inspection and to prepare a damage report. Within ten (10) days of receipt of shipment, Buyer shall file any claims for shortages, costs, losses or damage in regard to the order with the carrier.
- 6. TERMS OF PAYMENT**—Invoices will be mailed to Buyer usually within five working days of actual shipment of the purchased goods. For accounts with satisfactory credit, the standard payment terms are: net 30-days from date of invoice. Past-due accounts are charged a fee of 1.5% of the outstanding balance for each month past due. If partial or installment shipments are made, partial or pro rata invoices will be issued, and payments are due from dates of invoices. Advance payments and deposits will be offset against the final billing. If shipments are delayed by Buyer, payments shall be reckoned from the date when Seller is prepared to make shipment. If manufacture is delayed by Buyer, invoices shall be based on estimated percent completion. Products held for Buyer's release shall be at the risk and expense of Buyer. If credit cannot be satisfactorily established prior to shipment, pre-payment by cash, bank check, money order, COD or other acceptable means may be required, with extra expenses added to the amount due. Prepayment with order may be required for jobs involving custom designs, unusually large quantities, non-standard products or the like. Sales taxes are collected for California shipments, if applicable, unless an exemption certificate is on file. Products sold remain the properties of Seller until all invoices are paid in full, and Buyer agrees to do what ever is necessary to protect product and assure that the title is retained by Seller. Risk of loss passes to Buyer on delivery to carrier (or Buyer), FOB point of shipment. Taxes, shipping, fees and expenses incurred by Seller in regard to handling an order are billed to Buyer, and Buyer agrees to pay such amounts within the agreed terms. Minimum billing is \$150.00 for credit cards, and \$250 for PO or COD.
- 7. EXPORT SHIPMENTS**—Payment for equipment shipped to non-U.S. Buyers is through an Irrevocable Letter of Credit drawn on a mutually agreeable U.S. bank. Total payment for goods, packing, freight, insurance, duties, taxes and fees shall be paid to Seller in U.S. dollars within ten (10) days following delivery of goods to the carrier (packed and addressed to the specified port of entry) and the mailing of required documentation to the bank. Forwarding costs, damage, losses or delays in transit are Buyer's responsibility. Buyer agrees to assist Seller in the preparation of any export license applications that may be required and to comply fully with the terms stated therein.



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- 8. DEFAULT OF BUYER**—In the event of Buyer's default on payment, Buyer agrees to pay Seller a fee of 1.5% per month on any unpaid balance, plus reasonable attorney's fees, charges and expenses for court, witnesses, and any other cost incurred by Seller in enforcing Buyer's obligations hereunder, plus interest, fees and costs, whether or not Seller institutes litigation.
- 9. CHANGES AND CANCELLATIONS**—Orders are not subject to change, cancellation, or deferrals of shipment without the agreement of the Seller. Buyer agrees to reimburse Seller for additional costs incurred as a result of any changes, cancellations or deferrals of shipment, at the discretion of the Seller. Seller reserves the right to (a) invoice Buyer for and/or to ship, any products at any time on or after date of manufacture or Buyer's initial requested shipping date as shown on the face of the purchase order, whichever is the later; (b) transfer to its general stock any products ordered by Buyer for which Seller shall have been given no instructions for shipment to be made within four (4) weeks following the date of manufacture or Buyer's initial requested shipping date, whichever is the later; or (c) resell for any prices and on any terms Seller may choose, or to scrap, any products for which Buyer shall not have requested that shipment be made within three (3) months following Buyer's initial requested shipping date or date of manufacture, whichever date shall last occur, and to invoice Buyer for such products according to Seller's then current price list less net proceeds from any resale of any net scrap value. Seller reserves the right to assess storage charges on all merchandise held in storage by Seller in excess of thirty (30) days following completion of the order or thirty (30) days after the Buyer's requested availability date, whichever is the later.
- 10. PATENT INDEMNITY**—Seller warrants that the sale and use of its standard catalog products furnished hereunder will not infringe any valid U.S. patent. Seller will defend Buyer, at Seller's cost and expense in any action or proceedings in connection with any allegation of infringement, provided 1) that Buyer immediately notifies Seller of any such action or proceedings, 2) that Seller has the sole control of any suit or negotiations, and 3) that Buyer assists Seller in any reasonable ways requested by Seller, at no charge to Seller except for reimbursement of Buyer's reasonable out of pocket expenses. This indemnity shall not apply to infringements arising from 1) Buyer's misuse, 2) Buyer's practices, methods or processes, 3) Buyer's use of product in combination with other equipment, or 4) equipment sold or manufactured by Seller to Buyer's design or specifications; in any of these cases, Buyer agrees to hold Seller harmless from any resulting infringements. If Buyer is prevented or delayed from use of the equipment by injunction, Seller may limit its liability hereunder by 1) substituting other non-infringing articles, 2) modifying said infringing articles to eliminate alleged infringement, 3) obtaining for Buyer the right to continue using infringing articles, refunding the purchase price, less depreciation. Seller's liability hereunder shall exclude lost production, additional costs, suits, or other expenses or losses to Buyer, and in no event shall Buyer's liability to Seller ever exceed the original purchase price paid by Buyer.
- 11. TECHNOLOGY, PATENTS AND OWNERSHIP**—Seller retains all rights to its product patents, drawings, manuals, processes, and technology, regardless of whether or not there was engineering, modification, analysis, drawings, prototypes or the like involved in the purchase price. In purchasing Seller's products, Buyer does not obtain any rights to this technology. Should information identified as secret, confidential or proprietary be supplied to Buyer for Buyer's convenience or assistance, Buyer shall protect such materials and shall not copy or disseminate them to any third party, and shall not use them for any purpose not in the best interest of Seller. Buyer shall return these materials to Seller, along with all documents or media containing them promptly, when finished or when requested by Seller.
- 12. COMPLIANCE WITH LAWS**—Buyer guarantees that it will comply with all applicable federal, state and local laws, rules and regulations pertaining to the use of Seller products purchased hereunder, and Buyer agrees to indemnify and hold Seller harmless from and against liabilities or penalties of any kind attributable to Buyer's violation of this condition.
- 13. NOTICE OF LIABILITY**—Should Buyer discover any damage, violations, infringements, losses, delays, or other conditions or events for which Buyer may hold Seller accountable or liable, Buyer shall notify Seller immediately of such conditions or events of its intention to hold Seller accountable or liable – by telephone or fax to Seller's headquarters, and confirmed by registered letter – to permit Seller to take corrective actions quickly to minimize costs or losses. Any such conditions or events not so conveyed by Buyer to Seller within ten (10) days of discovery shall be deemed forgiven, and no subsequent liability shall accrue to Seller, except to repair or replace under warranty as stated below.
- 14. LIMITED WARRANTY, REPAIR AND LIABILITY**—Seller will repair or replace, at its option, at Seller's plant or authorized repair center, any component or part sold by Seller which, when properly used and maintained in accordance with Seller's recommendations, advice, training, drawing, manuals and literature, proves faulty due to originally defective materials or workmanship within ninety (90) days following purchase or shipment to Buyer, whichever is earlier. A shorter or longer warranty period may be negotiated and agreed in certain instances, in which case the applicable duration shall be substituted in the foregoing. Electronic parts or circuit boards are not covered under this warranty. Product to be serviced under warranty must be returned to Seller per paragraph 21. If deemed by Seller to be covered by warranty, the item will be promptly repaired or replaced, at the option of Seller, at no cost to Buyer and return to Buyer domestic postage prepaid. If there is evidence of unauthorized repairs, mutilation of serial number, damage, tampering, accident, improper installation, misuse or improper maintenance, or if the warranty period is expired, the component or part may be repaired, charging Buyer for necessary labor and replacement shall constitute fulfillment of all obligations of Seller with respect to the products or services sold or supplied hereunder, and Seller shall not be further liable in contract or in tort (including error or negligence by Seller, its employees or representatives) for other liabilities or special, incidental or consequential damages including, but not limited to, financial losses to Buyer or others; damage to equipment; injury or loss of life; costs, expenses or fees; or claims by Buyer's employees or others which may accrue to Buyer through the use or misuse of Seller's products or services.
- 15. BUYER'S ASSESSMENT OF HAZARDS**—We are pleased to make recommendations and to refer to customers using the product in various ways, however, Buyer shall independently determine the suitability of the product for the intended application before



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purchase and use, giving full consideration to any hazardous or high risk conditions which could influence the selection or rejection of Seller products. Buyer assumes all risk and liability whatsoever in connection therewith regardless of any of our suggestions as to application or usage. Seller products are of a technical nature, involving complex electromechanical interactions. Specifications and instructions stated by Seller are made in good faith and are believed to be reasonably accurate. Unless specifically contracted with Seller and otherwise agree to in advance, the installation and ongoing use, maintenance, and operation of the Seller products purchased are the responsibility of the Buyer.

**16. STARTUP, COMMISSIONING, AND ONGOING MAINTENANCE**—At Buyer's request and expense, following installation of the system, Seller service representatives will visit the site, startup the system, test its operations, and train Buyer's representatives made available at the time on the use, maintenance and documentation. Buyer is responsible for understanding the system operation, troubleshooting, and problems that may develop, and for conducting test as frequently as necessary to assure continued performance. Seller maintains a training facility at its headquarters for retraining of Buyer's personnel. Seller service engineers may be consulted by telephone at its headquarters during normal working hours. Only factory authorized components are to be used for repair.

**17. NO LIABILITY**—In no event shall Seller or its representatives, distributors, or agents be liable hereunder or otherwise for incidental or consequential damages. Buyer agrees that Seller's combined, collective, total liability and Buyer's exclusive remedy hereunder or otherwise, in law or in equity, is expressly limited to the Warranty repair or replacement of any originally defective or nonconforming product at our factory, or, at our sole option, refunding the purchase price paid for the defective product.

**18. CAUTION: SELLER PRODUCTS SHOULD NOT BE USED IN ANY SITUATION WHERE INJURY OR DEATH TO PERSONS OR LOSSES OF VALUABLE PROPERTY COULD RESULT IF PRODUCT FAILS TO PERFORM PRECISELY AS BUYER EXPECTS. THIS LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF PERFORMANCE OR QUALITY, WHETHER WRITTEN OR ORAL, EXPRESSES OR IMPLIED, INCLUDING ANY WARRANTY FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITED WARRANTY GIVES BUYER SPECIFIC RIGHTS. BUYER MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.**

**19. EQUIPMENT INTERFACING**—If Seller's products are to be interfaced with equipment not of Seller's manufacture, Buyer assumes all responsibility for determining the compatibility, whether or not Seller has assisted in such interfacing activities, and no liability for any consequences shall accrue to Seller.

**20. RETURNS FOR REPAIR**—Equipment being returned for repair shall be accompanied by the Buyer's repair order and identified with a tag or label containing Buyer's name and shipping/billing addresses, phone number, purchase date (if under warranty), product designation, serial number, and a brief description of the problem. The shipment should be securely packed and shipped, shipping and insurance prepaid, to Seller's Repair Department or to an authorized repair center. Domestic warranty repair shipments returned to Seller "collect" will be returned to Buyer "collect". Note; Products which have been programmed or customized by Buyer for special configurations or features may be returned to the standard Seller configuration (e.g. computer memory erased) with attending inconvenience or losses to Buyer, unless instructions are provided otherwise, and any special servicing concurred with Seller.

**21. NON-WARRANTY REPAIRS**—Normal out-of-warranty repairs will be charged in accordance with Seller's applicable labor/materials prices and/or flat rates. Missing or faulty parts will be replaced and the unit cleaned, tested and calibrated, at normal charges. Return shipping and insurance charges will be prepaid and charged. Serial numbers may be changed if major parts are replaced. Seller reserves the right to exchange missing or faulty units with factory refurbished ones of similar condition and type. Whether or not under warranty, if no defects can be found in the returned equipment, unit will be cleaned, tested, calibrated and returned to Buyer, and a charge will be rendered covering the parts, labor, shipping and administrative charges. If Buyer still finds the equipment to be defective, Buyer should again return the equipment to Seller with a detailed description of the problem and circumstances of manifestation, along with the name of an available technical representative of Buyer and telephone number. On receipt, Seller will contact this person to attempt to understand and resolve the problem. If the original defect is found and repaired, credit will be issued for any previous billings in regard to the particular repair order. No additional warranty will be granted to any repairs made under an existing warranty, however, a thirty (30) day additional warranty term will be applied to all items repaired outside warranty, including any recurrence of the same problem within the Repair Warranty period. Note; certain consumable or sensitive components or parts (e.g. batteries, bulbs, printed circuit boards, etc.) can be easily damaged from extreme use, and are sold without warranty.

**22. SERVICE TIME**—Depending on the backlog, as well as parts and manpower availability at the time, equipment can usually be repaired and returned shipped to Buyer within two weeks after receipt by Seller. Emergency repairs may be provided if Buyer makes arrangements with Seller, possibly involving additional charges for special handling, overtime wages, shipping premiums, travel, etc.

**23. OTHER EQUIPMENT**—The repair of products sold by Seller, but not manufactured by Seller, which are returned for repair may be subcontracted to other firms, in which case their warranties apply.

**24. ON-SITE SERVICE**—Seller may provide on-site service when requested to assist Buyer in using or maintaining Seller's products, such service is at Buyer's expense, unless otherwise agreed in advance. Seller's personnel are not familiar with Buyer's plant and business, and should not be expected nor permitted to work on-site without constant supervision and assistance by Buyer's representative). Safety training and protective equipment, if deemed necessary or advisable by Seller or Buyer, shall be provided by Buyer at no cost to Seller. Unless otherwise agreed or stipulated, all necessary expenses for travel, living, purchases and personal necessities will be billed to Buyer. If equipment is under warranty, no charges will be made for direct labor and materials to the extent that would have been applicable had the repair work been done at Seller's Plant or authorized repair center. All labor, including travel time, and delays which prevent Seller's personnel from performing their service promptly and efficiently, will be at the then current



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hourly/daily rates. The safety of Seller's service personnel while on site is Buyer's responsibility. All work performed on Buyer's site by Seller's personnel is on a best effort basis, with no liability for delays, damage to equipment, loss of production, injuries or deaths to Buyer's employees or other parties, or other expenses of any nature accruing to Buyer, whether or not Seller's personnel may have acted improperly.

**25. RETURNS FOR CREDIT**—Goods returned for credit must have Seller's prior approval and must obtain a Return Material Authorization (RMA) number from Seller's Customer Service. Issuance of credit will be considered only if products are of current engineering design and production, and are regularly inventoried. Credits will be issued at the lesser of 1) the purchase price or 2) the then-current sale price-less any discounts taken by buyer on original purchase, less charges necessary to put the goods in first class condition suitable for resale as factory-new products, and less a re-stocking fee in the amount of 25% of the purchase price.

**26. PUBLIC NOTICE**—Unless specified otherwise by Buyer, any public announcements regarding the existence of a purchase of equipment by buyer are not prohibited by Buyer.

**27. TERMS AND CONDITIONS; NO MODIFICATIONS**—These terms and conditions constitute the entire agreement between the Seller and the Buyer, and shall supersede any provisions, terms and conditions contained in any confirmation order or other writing Buyer may issue. Any attempt by Buyer to alter, add to or omit any terms specified herein shall constitute a rejection and a counter offer. Seller hereby objects to any term contained in any document of Buyer if the term is different from or in addition to the terms herein. In any event, no change to or modification of Seller's terms and conditions shall be binding upon the Seller unless signed by an authorized representative of the Seller. If Buyer's purchase order or other correspondence contains terms and conditions contrary to or in addition to the Seller's terms and conditions, acceptance of any order by Seller shall not be construed as assent to such contrary or additional terms and conditions, or constitute a waiver by Seller of any of the Seller's terms and conditions. Any reference to Buyer's purchase order noted on Seller's acknowledgement shall not affect or limit the applicability of the Seller's terms and conditions.

**28. GENERAL**—The assignment of any product warranty right hereunder by Buyer without written consent of Seller shall be void, unless Buyer is overtly purchasing for resale, in which case this Warranty applies to the end user of the product, with initiation commencing the date of delivery and billing to the end user, but not later than thirty (30) days after shipment from the factory. No waiver, alteration, or modification of Seller's Terms and Conditions of Sale or Limited Warranty shall be binding unless in writing and signed by an officer of Seller. Seller may alter this Limited Warranty at will before an effected order is accepted. Should any part of this document be found by court of competent jurisdiction to be illegal or unenforceable then that phrase, or word shall be stricken, leaving the balance in full force and effect. Failure of Seller to promptly enforce compliance with all parts in every instance shall not prejudice Seller's future rights hereunder.

**29. APPLICABLE LAW; Choice of Forum**—This Limited Warranty and any controversy relating thereto shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. At Seller's option, any action or proceeding relating to this Agreement or its enforcement shall be commenced and heard only in the Superior Court of Alameda County, California or the United States District Court for the Northern District of California. Buyer hereby consents and submits to the jurisdiction and venue of those courts for purposes of such actions or proceedings.

**30. ATTORNEY FEES AND COSTS**:—In connection with any action or litigation including appellate proceedings arising out of this Contract, Seller shall be entitled to recover reasonable attorney's fees and costs in addition to any taxes, fees, assessments, penalties and interest. The remedies provided for herein shall be cumulative and not exclusive, and shall not preclude the Seller from any other relief which otherwise is available.

**I am an authorized agent of this company. I have read and understand the above Terms and Conditions of Sale**

Return signed original, by mail, to  
Contracts  
NetMotion, Inc.  
4160 Technology Drive  
Fremont, CA 94538-6360

Company Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone # & Extension: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_