

## AGREEMENT TO GENERAL TERMS AND CONDITIONS FOR SALE AND/OR LICENSE OF GOODS AND SERVICES OF LAUTERBACH, INC.

THESE TERMS AND CONDITIONS OF SALE AND/OR LICENSE (“TERMS”, ALSO FOUND AT WWW.LAUTERBACH.COM/TERMS) OF LAUTERBACH, INC. AND IT’S AFFILIATES (COLLECTIVELY, “LAUTERBACH”) SHALL APPLY TO ALL SALES AND/OR LICENSES BY LAUTERBACH OF ALL PRODUCTS (AS DEFINED HEREIN) AND SOFTWARE (AS DEFINED HEREIN), AND RELATED SERVICES TO EACH CUSTOMER THAT IS PARTY TO A PURCHASE ORDER (AS DEFINED HEREIN) WITH LAUTERBACH (EACH, “CUSTOMER”). CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER HAS AUTHORITY TO ENTER INTO, AND ACKNOWLEDGES THAT IT HAS READ, UNDERSTOOD AND AGREED TO, THESE TERMS. CUSTOMER PURCHASE ORDERS CONTAINING ADDITIONAL OR INCONSISTENT PROVISIONS SHALL BE NULL AND VOID. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, DOWNLOAD, ACCEPTANCE OR USE BY CUSTOMER OF ANY PRODUCTS, SOFTWARE, OR SERVICES SHALL CONSTITUTE AN IRREVOCABLE ACCEPTANCE OF THESE TERMS BY CUSTOMER. A CUSTOMER THAT DOES NOT AGREE TO BE BOUND BY THESE TERMS SHALL IMMEDIATELY RETURN ALL PRODUCTS, DELETE SOFTWARE AND NOT USE RELATED SERVICES.

### 01. SALE AND PURCHASE; LICENSE

**1.1** Lauterbach agrees to sell to Customer, and Customer agrees to purchase from Lauterbach, the system(s) (“**System**”), parts (“**Parts**”), and other products and services described in one or more Purchase Orders (as defined below) (collectively, the “**Product(s)**”), upon and subject to these Terms. For purposes of these Terms, “Purchase Order” shall mean a Customer purchase order for Products that has been accepted by Lauterbach. In the event of any inconsistency between these Terms and any terms or conditions indicated on a Purchase Order, these Terms shall control, unless otherwise expressly agreed in a separate writing signed by Lauterbach and Customer.

**1.2** Subject to these Terms and payment by Customer of all applicable fees associated with each functionality as identified by Lauterbach in writing, Lauterbach hereby grants to the Customer a non-exclusive, non-transferable, license to use the Lauterbach-provided software (“**Software**”), solely for the purpose of using the Products, and to use the instructions, specifications, and similar written information that Lauterbach makes available to Customer in conjunction with the Product (“**Documentation**”). The license granted under this Section 1.2 shall terminate upon termination of these Terms for any reason. All rights not expressly granted by Lauterbach in these Terms are reserved.

**1.3** Lauterbach may make support services and Parts available to Customers under specific conditions and for a limited period following Product discontinuation in its sole discretion. Customer acknowledges that used/refurbished Products may be so eligible only for the remaining balance of such period.

**1.4** Customer shall be solely responsible for and shall pay when due all applicable sales, use and other taxes or duties imposed on the sale, purchase or license of the Products and Software. Lauterbach shall be responsible for payment of costs (other than taxes or duties) of shipment of the Products and Software to Customer, provided, however, that Lauterbach shall have no obligation to purchase or otherwise provide for insurance coverage with respect to the shipped Products and Software.

**1.5** During the period that these Terms are in effect (the “**Terms Period**”) and all times thereafter, Customer shall not directly or indirectly (i) modify, enhance, adapt, translate, make improvements to, create derivative works based upon any part of, disassemble, decompile, reverse engineer, reduce to any human or machine perceivable form or otherwise circumvent any technological measure

that controls access to or permits derivation of the source code of, the Products or the Software; (ii) rent, lease, sell, transfer, assign, or sublicense any of the rights granted hereunder; (iii) use the Products or Software in any manner prohibited by applicable law or regulation.

### 02. PAYMENT AND CANCELLATION

**2.1** The Customer may not cancel or change an accepted Purchase Order without Lauterbach’s prior written consent.

**2.2** The Customer shall pay Lauterbach for the Products in accordance with written terms provided to Customer by an authorized officer or designee of Lauterbach (the “**Payment Terms**”) and shall not be entitled to suspend payments or setoff or deduct any amount invoiced by Lauterbach. In the event Customer defaults in respect of payment of any sum invoiced by Lauterbach, then without prejudice to Lauterbach’s other rights and remedies, (a) all outstanding sums shall immediately become due and payable to Lauterbach, notwithstanding any credit terms granted to the Customer (if any), (b) Lauterbach may, in its sole discretion, delay or suspend delivery or cancel any existing, pending or new orders and/or agreements of or with the Customer, and (c) Lauterbach may retain any amount already paid to it by Customer.

**2.3** All NET Terms and Discount Terms shall be payable from date of invoice. Discount Terms shall apply only when invoice is paid in full, and in a single payment.

**2.4** Any amount not paid by Customer when due in accordance with the Payment Terms shall bear interest at the rate of 1.5% (or the highest legal rate, whichever is higher) per month.

### 03. DELIVERY, TITLE AND RISK OF LOSS

**3.1** The Products shall be delivered [CPT Destination] to the Customer’s destination indicated on the Purchase Order or otherwise mutually agreed to in writing (the “**Destination**”). Customer shall be solely responsible for payment when due of all applicable import duties and taxes (collectively, “**Import Duties**”). Lauterbach will bear the cost (except for Import Duties) of the shipment to the Destination indicated on the Purchase Order, provided that such Destination is within the USA, Canada or Mexico. Lauterbach shall make commercially reasonable efforts to adhere to Lauterbach’s quoted delivery dates, but Customer acknowledges and agrees that Lauterbach does not guarantee or warrant that delivery of the Products shall be free from delays. Lauterbach shall not be liable for any direct or indirect damage or loss that

the Customer may incur resulting from any such delay.

**3.2** Risk of loss shall pass to the Customer, once the Product has arrived at the Customer’s Destination. Notwithstanding the foregoing, if the Destination is located outside of the USA, then if Lauterbach ships the Products to a freight forwarding company within the USA for ultimate shipment to the Destination, the risk of loss shall pass onto the Customer once the Products have been delivered to such freight forwarding company.

**3.3** The Products shall remain the property solely of Lauterbach unless and until Lauterbach receives all payments due for the Products.

**3.4** The Customer shall notify Lauterbach in writing within ten (10) calendar days following the date of delivery of the Products at the Destination of any discrepancies between the Purchase Order and the list of materials shipped or of any damage to the Products discoverable upon reasonable inspection. If within 30 days of invoice, Customer and Lauterbach mutually determine that a delivered Product is entirely nonfunctional, which is not due to any action or inaction on the part of Customer, then Lauterbach will accept the Product back for a full refund of the amount paid by Customer for such Product. If within 120 days of invoice, Customer and Lauterbach mutually determine that any Product does not perform substantially in accordance with applicable specifications, Lauterbach will accept the Product back for a refund of the amount paid by Customer for such Product, less a restocking fee of 20% of such amount. If no such mutual determination is made within such periods, the Products shall be deemed to be accepted by Customer in the quantity specified on the bill of lading or commercial invoice and in good condition. Except as provided above, Lauterbach will not accept returns except in extenuating circumstances, at its sole discretion, and with a restocking fee it determines based upon, among other factors, time since purchase and wear and tear. Prices other than “List Price” may be agreed from time to time between Lauterbach and Customer and in such event such prices shall be confirmed in writing by Lauterbach to Customer, otherwise such prices shall not take effect.

### 04. TRAINING

Lauterbach may from time to time make available training in the use and operation of the Products and Software. The location where the training takes place shall be determined by Lauterbach and agreed upon by the Customer.



**05. PRODUCT AND SOFTWARE SUPPORT**

For 12 months following invoice date for the Products, Lauterbach may make telephone and online support available during normal business hours as Lauterbach may determine. Additional support is available at www.lauterbach.com.

**06. SOFTWARE MAINTENANCE**

Additional Software maintenance may be made available to Customer by Lauterbach if the parties so agree in a separate written agreement (each, a "Maintenance Agreement"), which shall have a term of one (1) year and be subject to the then current applicable pricing terms. Such Maintenance Agreements shall cover technical support and updates. Lauterbach shall use commercially reasonable efforts to create workarounds or fix bugs that can be verified and/or reproduced by Lauterbach personnel. Installation and onsite service or support shall not be covered by Maintenance Agreements. It shall be Customer's responsibility to renew the Maintenance Agreement on a timely basis, which renewal shall be for an additional one (1) year term. Customers may register their Software online to receive renewal reminders; once a Maintenance Agreement has expired, a discontinuity fee will be added.

**07. HARDWARE MAINTENANCE**

For 36 months following invoice date for the Products (the "Warranty Period"), or during the term of a valid hardware Maintenance Agreement, Lauterbach shall use commercially reasonable efforts to fix or provide a work around to a hardware bug in the Products that can be verified and/or reproduced by Lauterbach personnel, which fix or work around may include loaning used Parts, when available, to Customer from Lauterbach's local demo inventory. If within (30) days of Customer's receipt of new Parts, the Product is confirmed, by a qualified Lauterbach technician, to be entirely without function, which is not due to any action or inaction on the part of Customer, Lauterbach shall use commercially reasonable efforts to provide new Parts in exchange for those found to contain defects in materials or workmanship. The Customer shall return to Lauterbach any replaced Part within thirty (30) days from the replacement thereof and Lauterbach will be entitled to invoice the Customer for Parts not returned pursuant to the foregoing terms. Lauterbach's obligations under this Section 7 shall not extend to Parts damaged due to normal wear and tear, damage to probe pins, plugs, or similar components, damage caused by Customer, assembly, installation, training, on-site service, or third party components. All replaced and/or returned Parts or Products shall be the property solely of Lauterbach.

**08. SPARE PARTS**

Lauterbach may make spare Parts available to Customer under a separate written agreement, or if required by applicable regulations, for a limited period following Product discontinuation ("End of Support"). Discontinued Products and their respective End of Support dates may be identified from time to time on Lauterbach's website at www.lauterbach.com.

**09. WARRANTIES AND LIMITATIONS**

**9.1** Lauterbach warrants that during the **Warranty Period**, each Product or Software shall substan-

tially meet the relevant Lauterbach specifications. During the Warranty Period, Lauterbach shall undertake the measures identified in Sections 6 – 7, above, as applicable.

**9.2 Exclusion of Warranties.** Lauterbach shall have no obligation hereunder for support, maintenance, repair or replacement necessitated in whole or in part by catastrophe, willful misconduct, fault or negligence of the Customer, improper or unauthorized use of the Products including, without limitation, use prior to completion of installation as verified by Lauterbach, installation, modification or repair of the Products other than by Lauterbach or its authorized technical representatives, unusual stress, power failure, deviation from recommended maintenance procedures, failure to maintain the prescribed conditions at the installation site or other failure to comply with applicable Documentation, or any cause beyond Lauterbach's reasonable control, including without limitation fires, floods, strikes or other labor disputes, war, criminal disturbances, pandemics, power failure, acts of God or restrictions imposed by any governmental authority or agency.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN SECTION 9.1 ARE EXCLUSIVE AND IN LIEU OF, AND LAUTERBACH DOES NOT MAKE, ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY (INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR AGAINST INFRINGEMENT). LAUTERBACH DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION. THE REMEDY PROVIDED IN SECTION 9.1 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF LAUTERBACH TO CONFORM WITH SUCH WARRANTY, AND CUSTOMER SHALL HAVE NO CLAIM, EXCEPT AS AFORESAID, AGAINST LAUTERBACH, ITS AFFILIATES OR THE MANUFACTURER, SUPPLIER OR LICENSOR OF THE PRODUCTS, SOFTWARE OR RELATED SERVICES, WHETHER BASED IN CONTRACT, NEGLIGENCE, PRODUCTS LIABILITY, TRADE PRACTICES, OR OTHERWISE. REPAIR OR REPLACEMENT (OR REFUND, AS ELECTED BY LAUTERBACH) IN THE MANNER PROVIDED ABOVE SHALL CONSTITUTE FULFILLMENT OF ALL LIABILITIES OF LAUTERBACH WITH RESPECT TO THE QUALITY AND PERFORMANCE OF THE PRODUCTS, SOFTWARE OR RELATED SERVICES. CUSTOMER IS SOLELY RESPONSIBLE FOR SELECTION OF THE PRODUCT(S) AND SERVICES TO ACHIEVE CUSTOMER'S INTENDED RESULTS OR FOR CUSTOMER'S PARTICULAR APPLICATIONS.

**9.3 Limitation of Liability.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL LAUTERBACH, ITS AFFILIATES OR THE MANUFACTURER, SUPPLIER, OR LICENSOR OF THE PRODUCTS, SOFTWARE OR RELATED SERVICES BE LIABLE FOR DAMAGES OR CLAIMS RELATING TO SUCH OFFERINGS OR OTHERWISE ARISING OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THESE TERMS, IN EXCESS OF THE ACTUAL AMOUNT CUSTOMER PAID TO LAUTERBACH FOR THE SPECIFIC PRODUCT(S), SOFTWARE OR RELATED SERVICES THAT DIRECTLY GAVE RISE TO THE DAMAGES CLAIMED, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN

CONTRACT, NEGLIGENCE, PRODUCTS LIABILITY, TRADE PRACTICES, OR OTHERWISE. IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES OR ITS LICENSORS, MANUFACTURERS OR SUPPLIERS BE LIABLE FOR ANY LOSS OF REVENUE OR PROFITS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR RELIANCE DAMAGES OF ANY KIND EVEN IF LAUTERBACH OR CUSTOMER IS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

**10. CONFIDENTIALLY; PROPRIETARY RIGHTS**

Customer acknowledges that these Terms (unless made publicly available other than as a result of a breach of these Terms by Customer), all Software, Documentation and all technical and manufacturing techniques, concepts, methods, specifications and information relating to the Products, Software and Documentation, including all rights, title, and interest to the Software and all trademarks, copyrights, data, and source code relating thereto (collectively, "**Confidential Information**"), shall remain the sole and exclusive property of Lauterbach and its applicable licensors. With respect to such Software or Documentation, any use of the terms "sale", "purchase" or similar terms shall be interpreted to mean "license in accordance with these Terms", and in no event shall Customer obtain any rights in and to such Software or Documentation other than the license specifically granted herein. Customer agrees, during the Terms Period and at all times thereafter, to hold all **Confidential Information** in strict confidence and not to disclose the Confidential Information to any third party, except to those employees of Customer who are bound by restrictions at least as protective of Lauterbach as those provided herein and who have a need to access to the Confidential Information in order for Customer to use the Products, Software and Documentation in accordance with these Terms. Upon execution of a nondisclosure agreement satisfactory to Lauterbach by each Consultant (as defined below) who will receive Confidential Information, the Confidential Information may be disclosed by Customer to Customer's consultants who have been retained to perform services in connection with the Products ("Consultants"). Customer shall maintain all proprietary or copyright markings and legends on all Products, Documentation, Software, and permitted copies thereof, and will not make or permit use of any trademark or trade name of Lauterbach without Lauterbach's prior written consent or take or permit any action that could impair Lauterbach's rights, or damage the reputation of quality inherent, in its trademarks or other intellectual property.

**11. INDEMNITY**

**11.1** Subject to Sections 9.2 and 9.3 and the restrictions identified below, Lauterbach shall assume responsibility for defense of any suit or proceeding brought against Customer, insofar as it is based on a third party claim that an unaltered Product or Software or any part thereof furnished pursuant to these Terms infringes upon any trademark or patent; provided, however, that Lauterbach shall have been given immediate notice in writing of the assertion of any such claim and of the threat or institution of any such suit or proceeding, and all authority and assistance required for the investigation, preparation, defense and settlement of same; and provided further, that Lauterbach, at its



election, may, in lieu of defending any such suit or proceeding, substitute non-infringing equipment or software for the Product or Software alleged or determined to infringe any trademark or patent as aforesaid, obtain license rights for use by Customer and/or refund to Customer the purchase price paid for the infringing Product less depreciation of twenty percent (20%) per year from the date of delivery. This Section 11.1 states Customer's entire remedy, and Lauterbach's entire liability, for any such infringement or claim thereof. Without the prior written consent of Lauterbach, Customer will not incur any cost or expense in connection with any such claim, suit or proceeding or make any admission, or enter into any agreement, in connection therewith. Lauterbach shall have no liability for any infringement or claim thereof to the extent it is based upon or arises out of: (a) Customer prototypes, outputs, or other results of the Products; (b) the use with the Product of any supplies, equipment or software not manufactured by Lauterbach or its affiliates or any Product modified by Customer without obtaining Lauterbach's prior written authorization, (c) the use of any Product furnished hereunder with any other supplies, equipment, devices, software or data not supplied by Lauterbach, (d) the result of Lauterbach's compliance with any of Customer's designs or specifications, (e) any of the circumstances for which Lauterbach makes no warranty under Section 9, (f) Customer's continued use of any Product after receipt of notice of infringement, or (g) Customer's breach of these Terms (collectively, "Exclusions").

**11.2** Customer shall defend, indemnify, and hold harmless Lauterbach and its affiliates and licensors, and their employees, officers, directors, and agents from and against any loss, claim, suit or proceeding arising out of the Exclusions or any breach by Customer of these Terms.

## 12. SECURITY INTEREST

So long as any amounts remain to be paid by Customer, Lauterbach shall have a lien against, and Customer hereby grants to Lauterbach a security interest in, the Products, including all proceeds related thereto or derived therefrom, and Customer hereby agrees to execute any instruments to effect same. Notwithstanding the foregoing, Lauterbach will promptly release any such lien or security interest on the Products within three (3) business days after receiving complete payment therefor from Customer, which may include but is not limited to, filing the proper federal UCC documents or making the appropriate updates with credit reporting agencies.

## 13. EXPORT COMPLIANCE

Customer shall not transfer, export or reexport any Product, Software or any related technology except in full compliance with export controls ad-

ministered by the U.S. and other countries and any applicable import and use restrictions. Without limiting the generality of the foregoing, Customer shall not export or reexport such items to anyone on the U.S. Treasury Department's list of Specially Designated Nationals, the U.S. Commerce Department's Denied Persons List or Entity List, or any lists maintained by the U.S. Office of Foreign Assets Control and the U.S. Department of Homeland Security, as such lists may be revised from time to time, or for use in chemical or biological weapons, sensitive nuclear end uses, missiles, or life support systems. Customer represents it is not located in, under control of, or a national or resident of any such country or on any such list. Customer is solely responsible for determining compliance and obtaining all required approvals to facilitate the export of any products or technologies, including outside of the U.S.

## 14. NOTICES

All notices and communications between the parties shall be in writing and sent by (i) certified mail, return receipt requested, (ii) overnight/express courier, or (iii) facsimile (with original by first class mail) to the last known address of such party, or to such other address(es) of which notice is given in accordance with this Section, and shall be deemed given when received.

## 15. ENTIRE AGREEMENT; MODIFICATIONS

These Terms contain the entire agreement between the parties and supersedes all prior and contemporaneous representations, promises, statements, agreements and understandings, written or oral, regarding the subject matter hereof. These Terms may be modified by Lauterbach from time to time and reposted at [www.lauterbach.com/agb.html](http://www.lauterbach.com/agb.html). In no event shall a Purchase Order issued by Customer amend, modify or supplement any of these Terms, unless expressly agreed in a separate writing by the parties.

## 16. JURISDICTION

These Terms shall be governed by and construed under the laws of the Commonwealth of Massachusetts without reference to such jurisdiction's choice of law rules. Any action brought by Customer against Lauterbach, under these Terms or otherwise, shall be brought only in a competent court sitting in Middlesex County, Massachusetts. Customer also hereby consents to the jurisdiction of any court(s) of competent jurisdiction in which Lauterbach seeks equitable or injunctive relief for the breach of any of these Terms and in all cases waives any applicable right to a jury trial. Customer shall be liable for all costs incurred by Lauterbach (including reasonable attorneys' fees) in connection with (i) the collection of any past

due amounts owed by Customer, or (ii) any action in which Lauterbach is the prevailing party. The United Nations Convention for the Sale of Goods shall not apply to the interpretation or enforcement of these Terms.

## 17. SPECIFIC PERFORMANCE; OTHER RIGHTS AND REMEDIES

Customer recognizes and agrees that Lauterbach's remedy at law for any breach of the provisions of these Terms may be inadequate and agrees that for breach of such provisions, Lauterbach shall, in addition to such other remedies as may be available to it at law or in equity or as provided in these Terms, be entitled to seek injunctive relief and enforcement of its rights by an action for specific performance to the extent permitted by applicable law. Customer hereby waives any requirement for security or the posting of any bond or other surety in connection with any temporary or permanent award of injunctive, mandatory or other equitable relief. Nothing herein contained shall be construed as prohibiting Lauterbach from pursuing any other remedies available to it.

## 18. GENERAL

The relationship created by these Terms between the parties hereto is that of independent contractors and nothing herein shall be construed as creating a partnership or granting the right of one party hereto to bind the other. Customer may not assign or transfer these Terms or the rights granted or obligations created hereunder except with Lauterbach's prior written consent, except that Customer may assign these Terms, without the prior written consent of Lauterbach, to a successor in interest of Customer due to a merger or acquisition with an affiliate of Customer. Each party's rights or obligations under these Terms shall be binding upon and inure to the benefit of such party's successors and permitted assigns. Licensors of components of the Software may as third party beneficiaries enforce the Terms relating to their rights. Lauterbach may terminate these Terms in the event of Customer's breach of any term hereof. Upon termination for any reason, Customer shall cease use of the Software, delete or destroy all copies in its possession including that which may have been provided to contractors or consultants, and execute a certification evidencing same. In the event of any insolvency proceeding by or against Customer, Lauterbach may terminate all or any part of these Terms. The unenforceability of any provision of these Terms shall in no way affect the enforceability of any other provision. A waiver by Lauterbach of any provision of these Terms must be in writing by an authorized officer of Lauterbach to be valid. Sections 1.4, 1.5, 2, 3.1-3.3, 9.2-9.3, and 10 -18 shall survive termination of these Terms.