

## SALES TERMS, CONDITIONS, AND WARRANTY

**DEFINITION:** As used herein: "Seller" means Memsense, 2693D Commerce Road, Rapid City, SD 57702. "Buyer" means the party purchasing Product(s) from the Seller. "Product" means all articles, materials, work or services offered by the Seller and described in the accompanying quotation, acknowledgement, invoice, or other Seller form. "Order" means any purchase Order or contract issued by the Buyer for Products provided by the Seller.

**ACCEPTANCE:** By purchasing Product from Seller, Buyer agrees to be bound by these Sales Terms, Conditions, and Warranty. Seller shall not be bound by any other terms of sale or service. This Sales Terms, Conditions, and Warranty agreement shall supersede all other agreements made, expressed or implied, in communications between Seller and Buyer.

**WARRANTY:** Seller warrants that the Products will be free from defects in material and workmanship and conform in all material respects to their applicable specifications for a period of one (1) year from the date of delivery ("Warranty Period"), when operated under normal conditions and in accordance with their applicable specifications. For any breach of this warranty, Seller will, at its option and expense and as its sole obligation, and as Buyer's exclusive remedy, repair or replace any defective Product returned to Seller during the Warranty Period, provided that an examination by Seller discloses to Seller's reasonable satisfaction that a defect is covered by this warranty. This warranty does not apply to any Products that have been (i) subject to misuse, neglect, or abuse, (ii) improperly installed or maintained, or (iii) repaired or altered by anyone other than Seller. The warranty period for Products repaired or replaced under this warranty shall be limited to the components repaired or replaced and shall run for a period of one hundred and eighty (180) days from the date of delivery or the balance of the original one (1) year Warranty Period (excluding the time the Products were out of service and in Seller's plant), whichever is longer. EXCEPT AS STATED IN THIS SECTION, SELLER MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

**LIMITATION OF LIABILITIES:** In no event shall Seller be liable to Buyer or any third party for consequential, indirect, punitive, special, or incidental damages (including but not limited to loss of profits) arising from or relating to the sale, delivery or use of the Products. Seller's total cumulative liability under this Agreement to Buyer or any third party (including indemnity obligations), whether in contract or tort or otherwise, will not exceed the amount paid by Buyer to Seller for the Product sold hereunder giving rise to such liability.

**DELAYS:** Delivery times quoted are estimates only. Seller shall not be liable for delay in delivery or for failure to manufacture, due to causes beyond its reasonable control, including but not limited to acts of God, acts of any government, acts of civil or military authority, acts of Buyer, application of US Government priorities, Government delays in granting Export Licenses, fires, strikes, floods, war, terrorism, riot or civil commotion, delays in transportation, difficulty in obtaining necessary labor or materials. In the event of any such delay, date of delivery shall be extended for a period of time equal to that lost by reason of the delay.

**TAXES:** Prices do not include sales or excise tax, VAT, duties or other governmental charges resulting from this transaction or the manufacture, sale, ownership, possession, or use of the Products, all of which must be paid by Buyer. Buyer shall provide Seller a tax exemption certificate acceptable to the taxing authorities.

**SHIPMENT:** Title to all purchased material and risk of loss therefore is passed from Seller to Buyer at the time of shipment from Seller's facility. Unless otherwise agreed upon in writing, all purchased material will be shipped uninsured. Seller may request partial shipment and invoice therefore. Buyer is responsible for all shipment charges.

**EXPORT LICENSE:** Buyer will comply with all applicable export and import control laws and regulations in its use of the Products and Buyer will not export or re-export the Products or any technical data or confidential information derived from or pertaining to the Products without all required United States and foreign government licenses.

**NCNR:** Unless explicitly stated by Seller, after the order is placed there is no cancellation or refund. All sales are final.

**ENTIRE AGREEMENT:** Acceptance of these Sales Terms, Conditions, and Warranty shall constitute the entire Agreement between Seller and Buyer with regard to the Order of Product.

**VENUE:** Any proceeding brought to enforce this agreement shall be brought in the state of South Dakota.