

# PENDOTECH TERMS AND CONDITIONS OF SALE

PendoTECH LLC's ("Seller") acceptance of any purchase order or offer is expressly made conditional on the Buyer's acceptance of these terms and conditions. Seller rejects any and all additional or different terms in Buyer's offer or purchase order, including any attempt by Buyer to limit Seller's acceptance to the terms of such offer or purchase order. These Terms and Conditions for Sale for the sale of products, systems and goods ("Goods") and/or the license of software and/or firmware which are preloaded into the Goods ("Software") to be provided hereunder constitute the entire agreement ("Agreement") between Seller and Buyer.

- 1. TERMS OF PAYMENT:** Subject to the approval of Seller's Credit Department, standard terms are F.O.B. shipping point, net 30 days from date of Seller's invoice in U.S. currency, or export shipments or special circumstances for which Seller may require other arrangements. If any payment owed to Seller hereunder is not paid when due, it shall bear interest, at a rate to be determined by Seller which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorneys' fees.
- 2. PRICES:** Unless otherwise specified by Seller, Seller's price for the Goods shall remain in effect for thirty (30) days after the date of Seller's quotation or acceptance of the order for the Goods, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods pursuant to Seller's standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods to Seller's price in effect for the Goods at the time the order is released to final manufacture. Notwithstanding any of the foregoing to the contrary, the price for Goods sold shall be Seller's price in effect at the time of shipment to Buyer.
- 3. DELIVERY AND DOCUMENTATION:** All shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. Seller shall provide Buyer with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Seller, they shall be provided to Buyer at Seller's price then in effect.
- 4. EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or unforeseen circumstances or causes beyond Seller's reasonable control.
- 5. TERMINATION AND SUSPENSION BY BUYER:** Buyer may terminate or suspend its order for any or all of the Goods covered by the Agreement, provided that Buyer gives Seller reasonable advance written notice of such termination or suspension and reimburses Seller for all losses, damages, costs and expenses arising from such termination or suspension.
- 6. LIMITED WARRANTY:** Subject to the limitations contained in Section 7 and except as otherwise expressly provided herein, Seller warrants that the Software will execute the programming instructions provided by Seller, and that the Goods manufactured by Seller will be free from defects in materials or workmanship under normal use and service until the expiration of twenty-four (24) months from the date of shipment by Seller. Expendable items are warranted to be free from defects in material and workmanship under normal use and service for a period of ninety (90) days from the date of shipment by Seller. Products purchased by Seller from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. Buyer agrees that Seller has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If, within thirty (30) days after Buyer's discovery of any warranty defects during the applicable warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option and as Buyer's sole and exclusive remedy hereunder, promptly correct any errors that are found by Seller to exist in the Software, or repair or replace F.O.B. point of manufacture, that portion of the Goods or Software found by Seller to be defective. All replacements or repairs necessitated by inadequate preventive maintenance, or by normal wear and usage, or by fault of Buyer, or by unsuitable power sources or by attack or deterioration under unsuitable environmental conditions, or by abuse, accident, alteration, misuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by an authorized Seller representative. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller. Failure by Buyer to give such written notice of defects within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. All warranties, either express or implied, extend to BUYER only. All descriptions, representations and/or other information concerning Goods on the PendoTECH website and/or contained in PendoTECH's advertisements, brochures, promotional material, or statements made by employees or sales representatives of PendoTECH are solely for general informational purposes only and are not binding upon PendoTECH. No employee or sales representative of PendoTECH shall have any authority to establish, expand or otherwise modify PendoTECH's warranty associated with the sale of Goods. SELLER shall not be liable to BUYER in any manner with respect to Goods sold. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY TYPE, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS AND EXCLUDES ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT OR WARRANTY ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR PERFORMANCE.
- 7. LIMITATION OF REMEDY AND LIABILITY:** SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT UNDER THE LIMITED WARRANTY CLAUSE IN SECTION 6. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL.
- 8. PATENTS:** PendoTECH, LLC makes no warranty or representation regarding whether or not a customer's end use of any PendoTECH product, system or Good infringes the valid intellectual property rights of others.
- 9. INSTALLATION:** Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Goods. Seller shall provide a quotation for services to assist Buyer in these functions if requested.
- 10. TAXES:** Any tax or governmental charge or increase in same hereafter becoming effective increasing the cost to Seller of producing, selling, or delivering the Goods or of procuring material used therein, and any tax now in effect or increase in same payable by the Seller because of the manufacture, sale or delivery of the Goods, may at Seller's option, be added to the price herein specified.
- 11. SOFTWARE AND COMPUTER PROGRAMS:** Buyer is granted a nonexclusive, royalty free license only for Buyer's use of the Software. Under this license Buyer may: (a) Use the Software only with the Goods provided; and (b) Adapt the Software for Buyer's use with the Goods
- 12. BUYER SUPPLIED DATA:** To the extent that Seller has relied upon any specifications, information, representation of operating conditions or other data supplied in writing by Buyer to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.
- 13. NOT APPROVED FOR LIFE SUPPORT USE:** Goods and Software are not designed, intended or authorized for use as components in life support or medical devices. They are not designed for any application in which the failure of the product could result in personal injury, death or property damage.
- 14. GENERAL PROVISIONS:** (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Seller. (e) The Agreement is formed and shall be construed, performed and enforced under the laws of the State of New Jersey. However, Buyer and Seller agree that the proper venue for all actions arising under the Agreement shall be only in the State where the Goods involved in such actions were manufactured.
- 15. SAFETY PROTOCOLS:** PendoTECH specifically rejects any provision mandating health measures or safety protocols related to COVID-19, including vaccination, on PendoTECH personnel or PendoTECH operations that PendoTECH has not expressly agreed to in writing.