

## DEFINITIONS

“Buyer” means the corporate body or other entity of purchaser, which shall include the principal of Buyer if Buyer is acting on behalf of another entity, purchasing Equipment and/or Services from Aurizon Ultrasonics, LLC as well as their successors and assigns.

“Seller,” “Aurizon Ultrasonics” or “Aurizon” means Aurizon Ultrasonics, LLC as well as its successors and assigns.

“Party/Parties” means either Buyer or Aurizon Ultrasonics, or both together, depending upon the context.

“Contract” or “Contract Documents” means only those documents expressly agreed to in writing by the Parties, which may include Aurizon’s quotation (“Quote”), technical specifications, these Terms and Conditions, purchase order (“P.O.”), P.O. acknowledgment, letter of award, and other attachments, and excludes any other terms and conditions or documents, whether printed on P.O. form or otherwise. All P.O.s are subject to Aurizon’s written acceptance. All Contract changes must be agreed to in writing by both Parties. Any Quote is subject to, and shall be binding upon Aurizon only if, and to the extent, (i) Aurizon receives a P.O. based on the Quote and (ii) Aurizon accepts such P.O. in writing. In case of any contradictions between the Contract Documents and these Terms and Conditions, the Contract Documents shall prevail. These Terms and Conditions prevail over any of Buyer’s terms and conditions of purchase not agreed to in writing by Seller.

“Equipment” means machinery, systems, components, spare parts, materials, hardware, software, instrumentation and technical documentation as expressly agreed to be supplied by Aurizon to Buyer under this Contract.

“Services” means on-site work, erection supervision, training, start-up assistance, testing and other services as expressly agreed to be rendered by Aurizon to Buyer under this Contract.

“Software” means computer programs, applications, and related documentation and data, like source, object and executable codes, listings and firmware as expressly agreed to be supplied by Aurizon to Buyer under this Contract.

## 2. SCOPE OF EQUIPMENT AND SERVICES

- The scope of Equipment and Services to be provided by Aurizon is limited to that expressly set forth in a Quote and P.O. accepted in writing by Aurizon.
- Service rates, unless specified in the P.O., shall be charged at the rates set forth in Aurizon’s then current service rate sheet.
- If Seller’s performance of its obligations under the Contract is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under the Contract or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.
- With respect to the Services, Buyer shall:
  - cooperate with Seller in all matters relating to the Services and provide such access to Buyer’s premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of the Contract; (iii) provide such customer materials or information as Seller may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

## 3. PRICE, TAXES AND TERMS OF PAYMENT

- Unless otherwise set forth in an accepted P.O., prices do not include any sales, use, property, value added or other taxes or charges, whether federal, provincial, state or local (“Governmental Charges”). Buyer shall be liable for all Governmental Charges relating to the Equipment and Services provided by Aurizon. Price includes Aurizon’s own income taxes, Aurizon’s standard packing, freight, insurance and customs duties (unless excluded).
- Terms of payment are set forth in this Contract. Unless otherwise set forth in an accepted P.O., all invoices are due net 30 days from the date of invoice. All overdue invoices shall bear interest at the rate of 1.5 % per month, or the maximum amount permitted by applicable law (whichever is less), accruing from the due date until paid in full. Buyer shall make all payments hereunder in US dollars. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off or any claim or dispute with Seller.
- In the event that a payment to Aurizon remains unpaid more than 30 days, Aurizon reserves the right, without any liability and without prejudice to its other rights, (i) to terminate this Contract or to suspend the performance of its obligations under this Contract, and (ii) to institute other actions and remedies permitted by applicable law and this Contract.

## 4. DELIVERY OF EQUIPMENT

- Delivery date(s) shall be specified in an accepted P.O. and is subject to Buyer’s timely performance of its contractual obligations; including without limitation, providing timely information for design and engineering and review of drawings. If an accepted P.O. does not specify a delivery date, it shall be as set forth in the Quote. Seller shall not be liable for any delays, loss or damage in transit. Unless otherwise agreed in writing by the Parties, Seller shall deliver the Equipment and Software using Seller’s standard methods for packaging and shipping. Unless otherwise agreed to in writing by the Parties, delivery shall be made DAP Buyer’s facility (Incoterms 2010).
- If Aurizon defers shipment at Buyer’s request, Buyer shall indemnify Aurizon against all additional costs incurred by Aurizon thereby, such as demurrage, handling, storage, and insurance. Transfer to storage at Buyer’s request or

upon Buyer’s delay shall be considered shipment for all purposes, including invoicing and payment. Buyer shall bear risk of loss or damage during storage, or thereafter.

- Title to Equipment shall pass to Buyer upon (i) delivery and (ii) payment in full. Risk of loss shall pass to Buyer upon delivery. Title to Software shall at all times remain with Aurizon according to Aurizon’s software licensing terms, as such terms may be amended from time to time. Upon request, Buyer agrees to execute Aurizon’s software license and non-disclosure agreement.
- Buyer shall inspect the Equipment within fifteen (15) days of receipt (“Inspection Period”). Buyer will be deemed to have accepted the Equipment unless it notifies Seller in writing of any Nonconforming Equipment (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. “Nonconforming Equipment” means only the following: (i) product shipped is different than identified in the Contract; or (ii) product’s label or packaging incorrectly identifies its contents. If Buyer timely notifies Seller of any Nonconforming Equipment, Seller shall, in its sole discretion: (a) replace such Nonconforming Equipment with conforming Equipment; or (b) credit or refund the price for such Nonconforming Equipment. Buyer shall ship, at its expense and risk of loss, the Nonconforming Equipment to such address as Seller directs in writing. If Seller exercises its option to replace Nonconforming Equipment, Seller shall, after receiving Buyer’s shipment of Nonconforming Equipment, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Equipment to Buyer. Buyer acknowledges and agrees that the remedies set forth in this 4.d are Buyer’s exclusive remedies for the delivery of Nonconforming Equipment.
- Within 30 days of shipment, Seller may return standard Equipment to Seller’s place of business, at Buyer’s sole cost. Buyer shall pay a restocking fee of 15% of the sales price of such Equipment (not including shipping, handling or taxes, which costs Buyer shall pay), plus the actual cost of any repairs to the Equipment, as may be necessary in Seller’s sole discretion. Buyer shall pay the restocking fee and costs upon demand.

## 5. MECHANICAL AND PERFORMANCE WARRANTIES

### 5.1. Mechanical Warranty

- Aurizon warrants that Equipment will be free from material defects in design, engineering, materials and workmanship under normal use, maintenance, service and handling for a period of 12 months from shipment (“Warranty Period”). Only if expressly so provided in the Contract, a shorter Warranty Period may apply in specific cases or for specific materials or equipment (as warranted by sub-vendors of such materials and equipment).
- Aurizon undertakes, at its discretion and cost, to either repair or replace, or credit or refund the price of, the defective Equipment covered by the warranty in 5.1.a. provided that (i) Buyer has notified Aurizon in writing of the defects promptly following discovery, (ii) the Warranty Period has not expired, (iii) Seller returns such Equipment to Seller’s place of business at Buyer’s cost, if requested by Seller, and (iv) Seller reasonably verifies Buyer’s claim that the Equipment is defective. Buyer shall provide Aurizon the opportunity to examine and test the defective part(s). **THE REMEDIES SET FORTH IN THIS 5.1.B SHALL BE THE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTY IN 5.1.1.**
- For replacement parts provided pursuant to the warranty in 5.1., the Warranty Period shall commence on the date of installation of the replacement parts.
- All parts of Equipment replaced in connection with warranty replacements shall become the property of Aurizon.
- Warranty shall not apply to and Aurizon shall not be liable for:
  - consumables or parts having a life expectancy shorter than the Warranty Period such as ultrasonic horns and anvils;
  - ordinary wear and tear;
  - defects, damages, losses or costs (a) resulting from improper or incomplete handling, storage, erection, operation, maintenance or other use of Equipment by Buyer or third parties, or (b) caused by non-compliance with Aurizon’s manuals or instructions;
  - modifications to Equipment made by Buyer or third parties without a prior written consent of Aurizon, or
  - any other acts or omissions, including without limitation repairs, of Buyer or third parties. Without limiting the generality of the foregoing, products manufactured by a third party (“Third Party Product”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Equipment. Third Party Products are not covered by the warranty hereunder.

### 5.2. Exclusion

THE EXPRESS WARRANTIES AND REMEDIES GIVEN IN THIS CONTRACT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES GIVEN BY AURIZON TO BUYER. ANY AND ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, CONDITIONS OF MERCHANTABILITY, WARRANTY OF TITLE, WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, ARE HEREBY WAIVED AND DISCLAIMED (ALONG WITH ALL EQUIVALENT FOREIGN WARRANTIES, TO THE EXTENT PERMITTED BY APPLICABLE LAW).

## 6. PATENT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- Aurizon retains all right, title and interest in any patent, trademark or copyright in Aurizon-designed Equipment. Provided that Buyer is not in default of its obligations under this Contract, Aurizon grants a non-exclusive,

non-transferrable, single license to the Buyer for use of the Equipment in the application for which it was designed. Buyer shall take all reasonable security precautions to prevent copying or disclosure of all proprietary designs and intellectual property of Aurizon. Any use or modification of the designs not approved in writing by Aurizon shall be at the Buyer's own risk.

- b. AURIZON ULTRASONICS SHALL HAVE NO LIABILITY TO BUYER FOR CLAIMED INFRINGEMENT OF ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS RESULTING FROM:
  - (i) Buyer's own design or specification;
  - (ii) change or modification to Equipment by Buyer or a third party without Aurizon's prior written consent; or
  - (iii) use of Equipment in a manner or for a purpose other than specified in this Contract, or against Aurizon's manuals or instructions.
- c. IT IS EXPRESSLY AGREED TO BY THE PARTIES THAT NO LICENSE IS GRANTED OR PATENT INDEMNITY MADE WITH RESPECT TO PRODUCTS, WHICH ARE MANUFACTURED USING AURIZON SOLD EQUIPMENT.
- d. Seller has a proprietary interest in all information furnished by it pursuant to or in connection with the Contract. Buyer will keep in confidence and will not disclose any such proprietary information without the prior written permission of Seller, or use any such information for other than the purpose for which it is supplied. The provisions set forth herein shall not supersede the term of any confidentiality agreement between the parties.

### 7. LIMITATIONS OF LIABILITY

NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY CONTAINED IN THIS CONTRACT, AURIZON'S AGGREGATE LIABILITY TO BUYER HEREUNDER (WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED AN AMOUNT EQUAL TO 50% OF THE AMOUNT PAID TO SELLER FOR THE EQUIPMENT, SOFTWARE AND SERVICES SOLD HEREUNDER. AURIZON SHALL NOT ASSUME ANY LIABILITY FOR COMPLIANCE OF SAFETY OR ENVIRONMENTAL REGULATIONS BEYOND ITS SCOPE OF SUPPLY OR WORK. AURIZON SHALL IN NO EVENT OR CIRCUMSTANCE BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, COSTS OR LOSSES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO:

- LOSS OF REVENUE, PROFIT, USE OR PRODUCTION,
  - DOWNTIME OR PLANT SHUT-DOWNS,
  - RAW MATERIAL, ENERGY, UTILITY, LABOR OR CAPITAL LOSSES OR COSTS, OR FOR
  - CLAIMS RAISED BY BUYER'S CUSTOMERS; AND:
- WHETHER BASED ON BREACH OF CONTRACT OR WARRANTY, CONTRACT TERMINATION, NEGLIGENCE, TORT, STRICT LIABILITY, INDEMNITY, AT LAW OR IN EQUITY, OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE.

### 8. UNFORESEEN EVENTS AND CIRCUMSTANCES

The Seller shall not be liable for any reasonable delays in its performance under this Contract resulting from unforeseen events or circumstances beyond its reasonable control including, but not limited to, fire, strike or other labor conflict, acts of God, material shortage, casting failure, war, invasion or hostilities, terrorist threats or acts, riot, or other civil unrest, national emergency, flood, Governmental act or regulation, and transportation restrictions.

### 9. GENERAL

- a. Any notice given between the Parties under this Contract may be given to a Party at the notice address set forth in the Contract by courier, personal delivery or mail, postage prepaid, or by fax, e-mail or similar electronic method. Date of service shall be the date on which the notice is received.
- b. This Contract or any part thereof, shall not be assigned by Buyer without the prior written consent of Seller. No assignment or delegation relieves Buyer of any of its obligations under the Contract.
- c. Buyer shall be responsible for obtaining all licenses and permits as required for the work to be performed hereunder, including without limitation the right to use Equipment, building permits, and radioactive and environmental permits.
- d. Buyer shall comply with all applicable laws, regulations and ordinances.
- e. Neither Buyer, nor any of its subsidiaries or, to its knowledge, any director, officer, or employee of Buyer or any of its subsidiaries is a person or entity who: (a) is directly or indirectly owned or controlled by any person or entity currently included on the List of Special Designated Nationals and Blocked Persons or the Foreign Sanctions Evaders List (collectively, "SDN List") maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") or any other governmental entity imposing economic sanctions and trade embargoes ("Economic Sanctions Laws"); or (b) is directly or indirectly owned or controlled by any person or entity who is located, organized or a resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC or any other governmental entity.
- f. The Equipment, including any software, documentation and any related technical data included with, or contained in, such Equipment, and any products utilizing any such Equipment, software, documentation or technical data (collectively, "Regulated Equipment"), may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. Buyer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any Regulated Equipment to any jurisdiction or country to which, or

any party to whom, the export, re-export or related of any Regulated Equipment is prohibited by applicable federal or foreign law, regulation or rule. Buyer shall be responsible for any breach of the foregoing provision by its, and its successors' and assigns', parent, affiliates, employees, officers, directors, partners, members, shareholders, customers, agents, distributors, resellers or vendors.

- g. Neither Buyer, nor any of its subsidiaries or, to its knowledge, any of its subsidiaries' directors, officers, employees or agents is a person or entity who: (a) is currently the subject of any investigation by OFAC or any other governmental authority pursuant to any laws administered by OFAC or any other governmental authority ("Sanctions Investigation(s)"; or (b) is directly or indirectly owned or controlled by any person or entity who is currently the subject of any Sanctions Investigation. Buyer shall promptly notify Seller when it or any of its subsidiaries, or any of its or any of subsidiaries' directors, officers, employees or agents becomes the subject of any Sanctions Investigation.
- h. The monies used to fund Buyer's purchase under the Contract were not funded by or otherwise derived from: (a) the government of, or any person or entity within, any country that is the target of any laws administered by OFAC or Economic Sanctions Laws; or (b) any person or entity who is named on the SDN List.
- i. Buyer represents, warrants and covenants that Buyer and its officers, directors, employees, agents, and anyone acting on its behalf are and will remain in compliance with all applicable anti-bribery and anti-corruption laws, including without limitation the US Foreign Corrupt Practices Act.
- j. Buyer and Seller hereby expressly agree that the rights and obligations of the parties in connection with the Contract and the purchase of any Equipment, Services and Software shall not be governed by, or subject to, the provisions of the United Nations Convention on Contracts for the International Sale of Goods.
- k. In addition to any remedies that may be provided under the Contract, Seller may terminate the Contract with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due hereunder and such failure continues for 30 days; (b) has not otherwise performed or complied with the Contract, in whole or in part; (c) has breached any representation or warranty of Buyer hereunder; or (d) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Upon the expiration or earlier termination of the Contract, all indebtedness of Buyer to Seller, of any kind, shall become immediately due and payable to Seller, without further notice to Buyer.
- l. No action arising out of this Contract or any performance thereunder may be brought against Seller more than 1 year from the date of last main delivery of Equipment.
- m. No waiver by either Party of a breach of any provision of this Contract shall constitute a waiver of any subsequent breach of such or any other provision.
- n. If any provision of this Contract shall be held invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- o. The relationship between the Parties is that of independent contractors.
- p. Provisions of the Contract which by their nature should apply beyond their terms will remain in force after any termination or expiration.
- q. This Contract and the interpretation, construction and enforcement thereof and all provisions, suits, claims, disputes and special proceedings thereunder shall be governed by the internal laws of the State of Wisconsin, without regard to rules of construction concerning the drafter thereof and without regard to conflicts of law principles. Any controversy or claim arising out of or relating to the Contract, or the breach thereof, shall be determined by expedited, mandatory binding arbitration administered by the Internal Centre for Dispute Resolution of the American Arbitration Association in accordance with its International Arbitration Rules (the "ICDR Rules"). The number of arbitrators shall be one. The arbitrator shall be a lawyer fluent in English and shall be appointed in accordance with the ICDR Rules. The place of arbitration shall be Chicago, Illinois, U.S.A. The exclusive language of the arbitration shall be English and all documents and exhibits submitted to the arbitrator shall first be translated into English with the cost thereof borne in the first instance by the proffering party. Any monetary award shall be denominated in U.S. dollars.
- r. Except as otherwise set forth herein, the provisions of this Contract constitute the entire and final agreement and understanding between Aurizon and Buyer with respect to the supply of Equipment and Services and all prior communications between the Parties, whether in writing or verbal, are superseded hereby.

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