

**Mercury Systems, Inc.
Terms & Conditions of Sale**

The following terms and conditions shall govern the sale of Mercury Systems, Inc. (“Mercury”) products that are ordered by customer (“Buyer”), including all hardware (“Hardware”), software, and non-recurring engineering services (“NRE”) (collectively, the “Products”) as reflected in Buyer’s purchase order, contract, or other agreement. Any Buyer preprinted terms or modification to these terms without the express written approval of Mercury included or referenced in the purchase order shall not apply.

Software Products, including firmware (“Software”), are license by Mercury. The terms of the Mercury Software License Agreement (“License Agreement”) exclusively govern the use of all the Software provided by Mercury to its Buyers. Acceptance and execution of the License Agreement is required before the installation and use of the Software.

If Buyer submits a purchase order or other documentation to evidence that it wishes to proceed with the transaction that is the subject of a valid Mercury quotation, Buyer is deemed to have accepted these Terms & Conditions of Sale, the License Agreement, and the Mercury quotation (collectively, “Agreement”).

Copies of the License Agreement may be viewed at:

<https://www.mrcy.com/site-information/legal/>

1. Delivery of Hardware.

Delivery shall be FOB Origin (where the origination and destination points are within the United States) or FCA (Free Carrier) (Incoterms 2020) Mercury’s factory (for shipments where either the origination or destination point is outside of the United States). Title and risk of loss shall pass to Buyer upon delivery to the carrier. Unless otherwise directed and agreed upon with Buyer in writing, the Hardware will be shipped uninsured. Dates of shipment are estimates only and Mercury shall not be liable for any loss or damage by reason of any delay in delivery or for causes beyond Mercury’s control, or for failure to give notice of delay in delivery. Buyer shall be responsible for all transportation charges, transit insurance (if applicable), and handling charges, if any.

2. Final Acceptance.

Acceptance of the Hardware shall occur after the Hardware successful completion of the Final Acceptance Test (FAT), as applicable. Unless otherwise expressly stated in an individual Purchase Order, Final Acceptance Testing of the Hardware shall be to Mercury’s standard FAT procedure for the Hardware and occur at Mercury’s facility. Mercury shall include the Certificate of Conformance with the Hardware. Acceptance shall be deemed final and conclusive upon successful completion of the FAT, as applicable, and issuance of the Certificate of Conformance. No payment, prior test, inspection, passage of title, failure, or delay in performing any of the foregoing, nor failure to discover any defect or other nonconformance shall relieve Mercury of any obligations under this Purchase Order or impair any rights or remedies of Buyer.

3. Taxes.

Buyer shall be responsible for all taxes, duties, or fees on the sale or use of Products supplied to Buyer, except taxes based on Mercury’s income. If Buyer claims that it is exempt from such taxes, duties or fees, Buyer shall provide a valid tax exemption certificate required by the applicable government agency with jurisdiction.

4. Price Adjustment.

If, during the term of this agreement, the costs of goods, labor, or materials increases by more than 3%, either as evidenced by a recognized industry price index, or due to Government actions resulting in changes in law, taxes, tariffs, duties, or the like, the parties shall renegotiate the price of this agreement to reflect the actual cost increases.

5. Payment Terms.

With approved credit, payment is due net thirty (30) days from date of delivery by Mercury. Otherwise, payment terms will be full payment in advance of shipment by Mercury. All payments will be made electronically (using Automated Clearing House or Wire transfer) unless Mercury agrees in writing to a different payment method. If Buyer receives notice of any changes to the payment instructions from Mercury, including but not limited to changes to the bank name, Mercury account number, bank routing number, SWIFT code, etc., Buyer shall confirm such changes in writing with Mercury's authorized representative before proceeding with any payment. In the event Buyer fails to comply with this requirement, Buyer shall indemnify, defend, and hold Mercury harmless from any claims, losses, liability or damage arising therefrom.

Any payment received by Mercury beyond the time frame set forth herein shall be subject to a daily interest charge from the original payment due date until the day the payment is actually received by Mercury to be calculated at a rate one point five percent (1.5%) per month or at the highest lawful rate whichever is higher, as of the date the payment was due. In addition, in the event any payment is thirty (30) days or greater past due then Mercury, at its sole discretion, shall be entitled to stop work against the purchase order until such time as the Buyer makes such late payment and brings its account current with Mercury. In the event Mercury stops work the Buyer shall be liable for any resulting additional costs and/or delivery delays.

6. Warranty.

- A. Mercury warrants to the original Buyer only that Hardware will, at the time of delivery, conform to Mercury's then current documentation supplied with the Hardware. Mercury further warrants to Buyer that Hardware will be free from defects in material and workmanship for the period of one (1) year (unless otherwise expressly stated on the applicable Mercury proposal/quotation) from the date of delivery of Hardware (the "Warranty Period"). The Warranty Period shall commence upon delivery to carrier as stated in Section 1 above.
- B. Mercury will, at its sole option, repair or replace any Hardware found by Mercury to be defective if notified, in writing within the Warranty Period, and the Hardware is returned to Mercury via pre-authorized Mercury Return Material Authorization (RMA). Unless otherwise specified by Mercury in writing, all repaired/replaced Hardware is warranted for ninety (90) days or the remaining unexpired term of the original Warranty Period, whichever is longer.
- C. The above warranty is a limited warranty and will not apply if Mercury determines in good faith that (i) the Hardware has been altered/modified, other than by Mercury; (ii) the Hardware has been improperly used or installed; (iii) the Hardware has been used in a manner other than as specified by Mercury; (iv) the defect or non-conformance of the Hardware is caused by external factors such as, but not limited to, failure of electrical power; or (v) the Hardware or a component of the Hardware is designated end of life (EOL) by either Mercury or the Original Equipment Manufacturer (OEM). Buyer shall be responsible for the cost of test and evaluation for any Hardware returned by Buyer that exhibits No Evidence Of Failure (NEOF).
- D. Mercury's obligations under its standard warranty do not apply to the extent the Products, including but not limited to Mercury's BuiltSECURE™ products, are returned to Mercury in a condition not suitable for failure analysis, including but not limited to such Products that have been configured with blown fuses, customer-configured one-time programmable ("OTP") memory, classified non-volatile storage that cannot be purged, non-recoverable tamper events, encryption or other technology that prevents Mercury from communicating with or testing such Products using Mercury's standard testing procedures and methodologies.
- E. Mercury will perform services in a professional, workmanlike manner, consistent with industry standards.
- F. Mercury provides a limited warranty in its Software in accordance with the Software License Agreement terms.

G. DISCLAIMER OF WARRANTY

THE FOREGOING LIMITED EXPRESS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY OF MERCURY AND ITS SUPPLIERS WITH RESPECT TO THE HARDWARE AND ITS USE, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND MERCURY AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Substitutions and Modifications.

Mercury reserves the right to make substitutions or modifications in the specifications or design of any Hardware provided that such changes do not adversely affect product form, fit, function or performance.

8. Cancel/Reschedule.

A. Mercury Standard Hardware and Software

Buyer may cancel any purchase order or any part thereof for Mercury standard Hardware (excluding chassis systems) and Software, by giving Mercury written notice more than sixty (60) days prior to the scheduled delivery date of the Hardware or Software and shall pay a fifty percent (50%) cancellation fee.

All purchase orders for chassis systems are non-cancellable. All purchase orders for Hardware or Software which have been designated as being end-of-life by Mercury are non-cancellable.

Buyer may reschedule any purchase order or any part thereof for Mercury standard Hardware and Software one time only, by giving Mercury written notice more than sixty (60) days prior to the original scheduled delivery date of the Hardware or Software and shall pay, as applicable, either: (i) a twenty-five (25%) percent reschedule fee for orders rescheduled for delivery between sixty-one (61) and ninety (90) days after the original scheduled delivery date; or (ii) a ten (10%) percent reschedule fee for orders rescheduled for delivery between one (1) and sixty (60) days after the original scheduled delivery date. Rescheduling more than ninety (90) days after the original scheduled delivery date is not permitted, unless otherwise mutually agreed in writing.

B. Custom Products and Third-Party Products

Buyer may cancel any purchase order for custom Products or third-party Products by giving Mercury written notice more than ninety (90) days prior to the scheduled delivery date of the custom Products or third-party Products. In the event that Buyer cancels a purchase order for such custom Products or third-party Products, then Buyer shall pay a 10% percent cancellation charge. In addition, Buyer will be invoiced at the time of cancellation for all work completed on such custom Products or third-party Products received or non-cancellable by Mercury, for all work in progress, and for any of its suppliers' cancellation charges, at the prices quoted by Mercury.

Rescheduling of the delivery date of purchase orders for custom Products or third-party Products is not permitted, unless otherwise mutually agreed in writing.

9. Termination.

Either party may terminate this Agreement upon written notice to the other if the other party becomes insolvent, files a petition in bankruptcy, or fails to perform a material term or obligation of this Agreement and such failure to perform continues for a period of thirty (30) days after receipt of written notice of such breach. Failure to pay any monies due under this Agreement is considered a material breach. Termination shall not exclude other remedies each party may have for failure to perform its obligations hereunder.

10. Intellectual Property Indemnification.

Mercury will, at Mercury's own expense, defend any action brought against Buyer to the extent that such action is based on a claim that Mercury proprietary Hardware, if used as authorized in this Agreement, infringes a United States patent or copyright. Mercury will pay all costs and damages finally awarded by a court of

competent jurisdiction, provided that Mercury is given prompt written notice (by certified mail) of such claim and, all required information, reasonable assistance and sole authority and control to defend, negotiate or settle the claim. Mercury has the right, at Mercury's sole option, either to obtain the right to continue using the Hardware or replace or modify the Hardware so that it is no longer infringing. Mercury will not have any obligations or liability under this clause if the alleged infringement arises from (i) use or combination of the Hardware with other products, devices or software not supplied by Mercury, or (ii) Mercury's compliance with Buyer's designs, specifications or instructions, or (iii) modifications or alterations made by any party other than Mercury, or (iv) use of the Hardware in a manner not reasonably foreseeable. **THE FOREGOING STATES MERCURY'S ENTIRE LIABILITY AND OBLIGATION FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. MERCURY DISCLAIMS ALL OTHER LIABILITY FOR THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

Buyer agrees to indemnify and hold Mercury harmless from any claims, suits, proceedings, losses, liabilities, damages, costs and expenses (inclusive of Mercury's reasonable attorneys' fees) arising from (i) use or combination of the Products with other products, devices or software not supplied by Mercury, or (ii) Mercury's compliance with Buyer's designs, specifications or instructions, or (iii) modifications or alterations made by any party other than Mercury, or (iv) use of the Products in a manner not reasonably foreseeable. Mercury shall have the right to participate, at its expense, in the defense of any claim covered under this section with its own counsel of its own choosing.

11. Intellectual Property Ownership.

Buyer understands and agrees that Mercury shall solely and exclusively own and have all right, title and interest in and to all technical data, software, both object and source code, trade secrets, mask works, processes, ideas, know-how, documentation, concepts, inventions, improvements, discoveries and any other tangible or intangible property (collectively, the "Information") developed or prepared by Mercury pursuant to or in anticipation of, a Buyer purchase order and all related copyrights, patents, trade secret rights, mask work rights and other intellectual property rights.

Without limiting the generality of the foregoing, Buyer agrees that all records papers, reports, descriptive and pictorial material, printed or written technical information, drawings, reproductions thereof, samples, models, and tools supplied or produced by Mercury during performance of the work under this Agreement with Buyer shall be considered Mercury's property, the nature and contents of which shall not be disclosed to others without written permission from Mercury, and shall be surrendered by Buyer to Mercury upon completion of the related portions of such work, as may be requested.

12. Limitation of Liability.

In no event shall the total cumulative liability of Mercury with respect to direct damages, whether in contract, warranty, tort (including negligence or strict liability), or otherwise for the performance or breach of this Agreement or anything done in connection therewith exceed two hundred and fifty thousand dollars (\$250,000). Notwithstanding anything else in the Agreement to the contrary, the stated monetary limitation hereinabove is the maximum liability Mercury has to the Buyer.

IN NO EVENT SHALL MERCURY BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY, ARISING OUT OF OR RELATED TO ITS PERFORMANCE UNDER THE AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, WARRANTY, OR NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW OR OTHER THEORIES OF LIABILITY, INCLUDING STRICT LIABILITY:

- (a) LOSS OF, OR DAMAGE TO, DATA;
- (b) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
- (c) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO BUYER.

This Section 12 shall survive any expiration, termination, or cancellation of this Agreement.

13. General.

- A. Assignment. This Agreement may not be assigned by Buyer without the prior written consent of Mercury, which consent shall not be unreasonably withheld.
- B. Notices. All notices relating to this Agreement must be sent by either certified or registered mail, postage prepaid or electronic mail, by a duly authorized representative from Buyer's facility.
- C. Entire Agreement. This Agreement supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations. This Agreement may not be modified or waived, in whole or part, except in writing and signed by an officer or duly authorized representative of the party to be bound. This Agreement constitutes the entire agreement between the parties regarding the subject matter herein and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any and all terms and conditions included in any subsequent communications from Buyer (e.g. in purchase orders) are not accepted by Mercury unless explicitly agreed in writing.
- D. Governing Law and Venue. This Agreement and any matter arising out of or related to this Agreement, including any dispute, controversy, or claim arising out of or related to this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, exclusive of the conflict of laws provisions thereof. Exclusive jurisdiction for litigation of any dispute, controversy or claim arising out of, in connection with, or in relation to this Agreement, or the breach thereof, shall be only in the United States Federal District Court in Massachusetts or in the Massachusetts Court having competent jurisdiction.
- E. Changes in Law. If Mercury suffers (or will suffer) any schedule or performance delays, and/or incurs additional costs, including supply chain costs, as a result of any Government actions, including changes in law, taxes, tariffs, duties, or the like, Mercury will be entitled to an adjustment to the contract price and/or schedule extension, as applicable. Mercury will notify Buyer within 30 days of becoming aware of such change, identifying the change and the impact on the agreement.
- F. Export Restrictions. Buyer understands and acknowledges that the sale, export or re-export of Mercury products may be subject to the laws and regulations of the United States. Mercury products or services that are subject to the EAR may not be exported from the United States in their original form if they will be used for the design, development, manufacture, use or repair of nuclear, biological or chemical weapons, or for rocket systems (including but not limited to ballistic missile, space launch vehicles, sounding rockets) and unmanned air vehicles, (including but not limited to cruise missile systems, target drones and reconnaissance drones), or other missile technology without prior approval from the US Department of Commerce. In addition, Section 744 of the EAR contains other prohibitions against exports, re-exports, and transfers to certain end-users and against certain end uses. Diversion contrary to US law is strictly prohibited. Mercury products and services controlled by the ITAR may not be exported or transferred to foreign persons in the United States or abroad without first obtaining proper export authority from the U.S. Department of State. Mercury products may not be sold, exported or re-exported to any person or entity designated as prohibited or restricted by an agency of the US government. See "Lists to Check" at

www.bis.doc.gov for a complete listing. Sales or retransfers of Mercury products or services may not be made to countries prohibited by the U.S. Government. An End Use Statement signed by Buyer may be required prior to shipment. For further information contact Mercury and see www.pmdtc.state.gov or www.bis.doc.gov. Buyer agrees to indemnify, defend, and hold Mercury and its third-party suppliers, harmless from any claims, damages or suits resulting from its failure to comply with this Section 13. F.

To ensure compliance with the International Traffic in Arms Regulations (ITAR), Buyer must notify Mercury's Legal Department for instructions prior to providing Mercury any requirements, items or technical data subject to the ITAR. All purchase orders or requests for quotation that involve Buyer ITAR-controlled items or technical data must include the following statement, in a conspicuous format, on the item or technical data supplied to Mercury:

“ITEMS OR TECHNICAL DATA SUBJECT TO ITAR”

Mercury disclaims any liability whatsoever that may result from Mercury's inadvertent disclosure of Buyer's ITAR-controlled items or technical data to a "foreign person" (as that term is defined in the ITAR) resulting from Buyer's failure to abide by the foregoing requirement.

- G. Severability. The provisions of this Agreement are severable, and the invalidity of any provision hereof shall not affect the validity of any other provision.
- H. Waiver. Failure by either party to insist in any instance upon strict performance by the other party of any provision of this Agreement shall not be construed or deemed to be a permanent waiver of such or any other provision of this Agreement. The rights and remedies of the parties are not exclusive and are in addition to any other rights and remedies provided by law, equity or statute.
- I. Force Majeure. Mercury shall not have any liability under this Agreement for failure, delay, or excess costs in performing any of the obligations imposed by this Agreement to the extent such failure or delay is the result of any of the following events (each, a “Force Majeure Event”): (i) any fire, explosion, unusually severe weather, natural disaster or Act of God; (ii) pandemic; epidemic; any nuclear, biological, chemical, or similar attack; any other public health or safety emergency; any act of terrorism; and any action reasonably taken in response to any of the foregoing; (iii) any act of declared or undeclared war or of a public enemy, or any riot or insurrection; (iv) damage to machinery or equipment; any disruption in transportation, communications, electric power or other utilities, or other vital infrastructure; or any means of disrupting or damaging internet or other computer networks or facilities; (v) any strike, lockout or other labor dispute or action; (vi) any acts of the Government in either its sovereign or contractual capacity, including changes in law, taxes, tariffs, and/or duties ; or (vii) any other event beyond Mercury's reasonable control.
- J. Exclusion of Applicability. Mercury and Buyer agree to exclude application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act from this Agreement.