

SMARTX TECHNOLOGY INC
STANDARD TERMS AND CONDITIONS OF SALE
FOR PRODUCTS AND SERVICES

1. **General:** The following terms and conditions ("Terms") apply to all quotations, purchase orders and other sales agreements ("Agreement(s)") entered into by and between Smartx Technology Inc ("SMARTX") and any party ("Buyer") purchasing or otherwise acquiring SMARTX Products or Services, whether submitted to SMARTX via e-mail, by electronic means or in any other manner. SMARTX's acceptance is conditional on Buyer's agreement with these Terms in lieu of those on Buyer's purchase order or any other document. No conflicting or additional terms or conditions that may appear in any documentation of Buyer or in any modification to these Terms shall be of any force or effect unless accepted and agreed in writing by an officer of SMARTX. In the event documentation other than these Terms are inadvertently used, it shall be deemed to be utilized for convenience purposes only, and any such order be subject to these Terms only. SMARTX would not agree to sell Products or Services, without Buyer's agreement to these Terms.

2. **Prices and Releases:** The prices for Product and/or Services are exclusive of any and all Federal, State and local excise, sales, value added, excise, use and similar taxes. When applicable, such items will appear as separate additional line items on SMARTX's invoice or shall be delivered and billed to the Buyer at a later date. Prices do not include any domestic or foreign forwarding agent's or other transportation fees, fees covering consular invoices, or fees for any other necessary documents required by the country of destination. Buyer acknowledges that Tag yields vary, and that SMARTX may close an order and send its related invoices after SMARTX delivers at least ninety (95%) of the tags requested by Buyer. Products and Services purchased under these Terms may be used for Buyer's internal use only, and not for any other purpose (such as resale to a third party, except in the event Buyer has a written reseller agreement with SMARTX).

If the price of fuels, metals, raw materials, equipment or other production costs increases significantly, SMARTX shall have the right and Buyer shall have the obligation to renegotiate the price of all products not yet shipped, and if an agreement is not reached, SMARTX shall have the right to terminate this contract without liability.

3. **Title and Delivery:** Shipments inside the U.S. shall be delivered F.O.B. SMARTX's shipping dock. Delivery dates are estimates. SMARTX shall not be liable for any damage, losses or expenses incurred by Buyer if SMARTX fails to meet the estimated delivery dates. Products will be deemed accepted upon delivery. In the absence of written instructions of the contrary, SMARTX, on behalf of Buyer, shall have the right to exercise its own discretion as to selecting the method of shipment to be used and the selection of the carrier, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier thereby be deemed an agent of SMARTX. Transportation shall be provided under the then current terms and conditions of the carrier selected or, as SMARTX's option, under such terms and conditions as SMARTX may negotiate with the carrier selected. Buyer hereby grants SMARTX a security interest in each Product furnished and the proceeds thereof, until payment of all funds owing to SMARTX including without limitation the full purchase price. Buyer agrees to execute any documents as SMARTX requests to protect SMARTX's security interest.

4. **Payment Terms:** If SMARTX extends credit to Buyer, payment terms shall be net thirty (30) days after SMARTX's invoice. SMARTX may change or withdraw credit amounts or payment terms at any time for any reason. If the products are delivered in installments, Buyer shall pay for each installment in accordance with the above payment terms. If Buyer fails to make any payment when due, SMARTX may suspend or cancel performance under any agreements in which SMARTX has extended credit to Buyer. SMARTX's suspension of performance may result in rescheduling delays. If, in SMARTX's judgment, Buyer's financial condition does not justify the payment terms specified herein, then SMARTX may terminate this contract unless Buyer immediately pays for all components that have been delivered and pays in advance for all components to be delivered. Termination in accordance with this clause shall not affect SMARTX's right to pursue any other available remedies.

5. **Taxes:** Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all applicable taxes and duties. SMARTX will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes unless Buyer provides SMARTX with a duly executed sales tax exemption certificate. If Buyer is required by law to withhold any amount of tax from its payment to SMARTX, Buyer shall promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize such withholding tax.

6. **Contingencies:** SMARTX shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond SMARTX's reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God. In the event of a shortage of components, SMARTX may, at its sole discretion, allocate component production and deliveries.

7. **Warranties and Related Remedies:** SMARTX warrants that (i) each Reader, Antenna and other hardware components excluding Tags (together, "Hardware") will be free from defects in

materials and workmanship for a period of one (1) year after transfer of title (the "Hardware Warranty Term"), (ii) each Tag (including ICs, Straps, Inlays, and Labels) will be free from defects in materials and workmanship for a single use for a period of one hundred eighty (180) days after transfer of title (the "Tag Warranty Term") and (iii) the media (the "Software Media") which contain the Software will be free from defects in materials and workmanship for a period of ninety (90) days after transfer of title (the "Software Media Warranty Term" and, together with the Hardware Warranty Term and the Tag Warranty Term, the "Warranty Term") provided with respect to (i), (ii) and (iii) that such defect does not arise from (a) abuse, misuse, neglect, vandalism or accident, (b) modification or repair of the Product by personnel not certified by SMARTX to perform such modification or repair, or (c) use of the Product outside of the environmental specifications set forth in published product Specifications, manuals or other documentation. Product problems attributable to the use of Products with equipment or software not supplied by SMARTX are not covered under warranty. The limited warranty for the Software Media set forth above does not apply to the Software itself, which is provided "AS IS." Services are provided "AS IS," without warranty of any kind. EXPRESS WARRANTIES CONTAINED IN THIS SECTION 5 ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO PRODUCTS OR SERVICES, AND SMARTX DISCLAIMS, AND BUYER HEREBY WAIVES, ANY AND ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, EXCEPT TO THE EXTENT THAT SUCH DISCLAIMERS ARE HELD TO BE LEGALLY INVALID. THE DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY CONTAINED HEREIN REFLECTS AN AGREED UPON RISK ALLOCATION AND PRICING CONSIDERATIONS BETWEEN THE PARTIES RELATED TO THE PRODUCTS AND SERVICES.

8. Intellectual Property Indemnification:

8.1 Subject to clauses 8.2, 8.3, 9.1 and 9.2, SMARTX will pay any damages, liabilities or costs (excluding consequential and exemplary damages) finally awarded against Buyer, or agreed to by SMARTX as settlement or compromise, and will defend Buyer against any claim, suit or proceeding brought against Buyer, insofar as such claim, suit or proceeding is based on an allegation that products manufactured and supplied by SMARTX to Buyer directly infringe any United States country patent, copyright, or trade secret; provided SMARTX is (i) promptly informed and furnished a copy of such claim, suit, or proceeding, (ii) given all evidence in Buyer's possession, custody or control, (iii) given reasonable assistance in and sole control of the defense thereof and all negotiations for its settlement or compromise. Buyer hereby agrees to make available to SMARTX the benefit of any defense available to Buyer to any infringement allegation hereunder, including, but not limited to, any license or option to license or sublicense any intellectual property right that is the subject of such infringement allegation.

8.2 In the event of an allegation for which SMARTX is obligated to defend Buyer pursuant to clause 8.1, SMARTX may, but shall not be obligated to: (i) obtain a license that allows Buyer to continue the use of the products, (ii) replace or modify the products so as to be non-infringing, but in a manner that does not materially affect the functionality of the products, or (iii) if neither (i) nor (ii) is available to SMARTX at a commercially reasonable expense, then SMARTX may refund to Buyer the purchase price and the transportation costs of such products and prospectively cease to indemnify Buyer with regard to such products without being in breach of this contract. If SMARTX elects to provide either of the options set forth in clauses (i) and (ii) above, SMARTX's indemnity obligation pursuant to clause 8.1 shall be entirely fulfilled as to that individual claim, except for any damages, liabilities, or costs (excluding consequential and exemplary damages) incurred by Buyer prior to SMARTX taking such action. If SMARTX elects the option set forth in clause (iii) above, SMARTX's indemnity obligation under this contract shall be entirely fulfilled, regardless of any additional claims. Also, if SMARTX elects the option set forth in clause (iii) above, Buyer shall return to SMARTX any and all products remaining in Buyer's possession, custody or control.

8.3 SMARTX shall have no liability for any costs, losses or damages resulting from Buyer's willful acts, or any settlement or compromise incurred or made by Buyer without SMARTX's prior written consent. SMARTX shall have no obligation to defend and no liability for any costs, losses or damages, to the extent that an infringement allegation is based upon: (i) Buyer's use of the products in combination with any other product, software or equipment; (ii) Buyer's use of the products in a manner or for an application other than for which they were designed or intended, regardless of whether SMARTX was aware of or had been notified of such use; (iii) Buyer's use of the products in a manufacturing or other process; (iv) Buyer's modifications to the products; (v) SMARTX's compliance with Buyer's particular design, instructions or specifications; or (vi) SMARTX's compliance with any industry or proprietary standard or Buyer's use of the products to enable implementation of any industry or proprietary standard (such claims - i.e. those set forth in (i) through (vi) above - are individually and collectively referred to herein as "Other Claims").

8.4 Buyer shall indemnify and hold SMARTX harmless against any damages, liabilities or costs finally awarded against SMARTX or agreed to by Buyer as settlement or compromise, and will defend any claim, suit or proceeding brought against SMARTX insofar as such claim, suit or proceeding is based on an allegation arising from Other Claims.

8.5 THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY,

IN REGARD THERETO. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INTELLECTUAL PROPERTY INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT, AND THAT IN THE ABSENCE OF SUCH TERMS, THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9. Limitations and Damages Disclaimer:

9.1 **General Limitations.** IN NO EVENT SHALL SMARTX BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE GOODS PROVIDED HEREUNDER, REGARDLESS OF WHETHER SMARTX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, RETESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST SMARTX MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.

9.2 **Specific Limitations.** IN NO EVENT SHALL SMARTX'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY SMARTX PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO SMARTX FOR THE PARTICULAR UNITS SOLD UNDER THIS CONTRACT WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR UNITS SOLD TO BUYER UNDER THIS CONTRACT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

9.3 BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

10. **Cancellations and Rescheduling.** No cancellation or rescheduling of orders by Buyer within thirty days of SMARTX's estimated shipping date for the component or custom products like RFID OR Beacon Tag labels after artwork approval, will be accepted. Any cancellation or rescheduling by Buyer more than thirty, but less than ninety days before SMARTX's estimated shipping date for such components may result in a charge to Buyer. Such charge, if any, shall be reasonably determined by SMARTX based on factors such as whether the component was manufactured specifically for Buyer, SMARTX's ability to change its production schedule within the period of notice provided by Buyer, whether SMARTX acquired or allocated particular supplies or equipment to meet Buyer's order and such other factors as reasonably determined by SMARTX. Orders may be cancelled or rescheduled by Buyer more than ninety (90) days before SMARTX's estimated shipping date for such component at Buyer's discretion and without charge.

11. **Intellectual Property:** Buyer acknowledges that Products, and all related trademarks, service marks, patents, copyrights, trade secrets, inventions, and its and their underlying intellectual property rights, are owned exclusively by SMARTX or its licensors. Buyer agrees not to take any action that jeopardizes or that might reasonably be expected to jeopardize any right, title or interest of SMARTX or its licensors in or to any Products or their underlying intellectual property rights. Except as expressly provided in these Terms, Buyer shall not acquire any right, title or interest in or to any Products. Buyer shall not (and shall not permit any other person or entity to) remove or deface any copyright or proprietary notice or any other notice, statement or legend that appears on any Product.

12. **Software:** Subject to Buyer's strict compliance with the terms and conditions of these Terms, including payment of the applicable Price(s), SMARTX grants to Buyer a non-exclusive and non-transferable limited license for the internal use only of software contained in or supplied with the Products or Services, and for no other purposes. If a Product includes equipment and software, software may only be used as part of the Product. Software Product terms and conditions accompanying the Software ("Supplemental License Terms") are incorporated by reference herein and will govern in case of a conflict with these Terms. Software that is not licensed by SMARTX as the original licensor is subject to the license terms of the original licensor; SMARTX may include such additional terms in Supplemental License Terms. Software is confidential and copyrighted. Except as specifically authorized in any Supplemental License Terms, Buyer may not make copies of Software, other than for archival purposes. Unless enforcement is prohibited by applicable law, Buyer may not modify, decompile, or reverse-engineer Software. Buyer may not publish or provide the results of any benchmark or comparison tests run on Software to any third party. This license is effective until terminated. Buyer may terminate this license by destroying all copies of Software. This license will terminate immediately without notice, if Buyer fails to comply materially with any provision of these Terms.

13. **Privacy:** Buyer acknowledges that SMARTX respects consumer privacy, and that Products and Services are not designed or intended for use in a manner that might give rise to third party claims, causes of action or other legal proceedings ("Claims") related to privacy. Buyer, on behalf of itself and its customers, will defend or settle any Claim made or brought against SMARTX to the extent that it arises from or relates to privacy. Buyer will indemnify SMARTX from any settlements, costs, damages and fees (including attorneys fees and costs) incurred by SMARTX that are attributable to such Claims

14. **Non-waiver of Default:** In the event of any default by Buyer, SMARTX may decline to make further shipments. If SMARTX elects to continue to make shipments, SMARTX's action shall not constitute a waiver of any such default or affect SMARTX's legal remedies for any such default.

15. **Governing Law:** This contract shall be governed by and interpreted in accordance with the laws of the State of Florida, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this contract to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this contract will continue in full force and effect. Buyer agrees that non-exclusive jurisdiction for any dispute arising out of or relating to this contract lies within courts located in the State of Florida and consents to venue in Kissimmee, Florida. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and SMARTX may seek injunctive relief in any United States or foreign court.

16. Export Control:

16.1 Buyer agrees that unless prior authorization is obtained from the SMARTX, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code, received from SMARTX.

16.2 Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code acquired from SMARTX under this contract or any direct product of such technical data, software or software source code. Accordingly, Buyer shall not sell, export, re-export, transfer, divert or otherwise dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by US or applicable non-US laws. Further, Buyer shall give notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such product, technical data, software or software source code from Buyer with the intention of exportation. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to fulfill its obligations under this contract. If government approvals cannot be obtained, SMARTX may terminate, cancel or otherwise be excused from performing any obligations it may have under this contract.

17. **Assignment:** This contract shall not be assignable by Buyer without SMARTX's prior written consent. Any unauthorized assignment shall be null and void.

18. **Entire Agreement:** This contract constitutes the entire agreement between the parties relating to the sale of the products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the sale of the products made by any SMARTX representative, which are not stated herein, shall be binding on SMARTX. No addition to or modification of any provision of this contract shall be binding upon SMARTX unless made in writing and signed by a duly authorized SMARTX representative. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in this contract. These terms and conditions shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any purchase order or other writing not expressly incorporated herein, including but not limited to data sheets, application notes and purchase order acknowledgements. The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract.