



Terms and Conditions of Sale WIKAL USA

I. General

These Terms and Conditions apply to purchases from WIKAL Instrument, LP, WIKAL Mobile Control, LP; WIKAL Sensor Technology, LP; and Phase IV Engineering Inc. ("Seller"), on all orders for products and/or services.

- A. Buyer Purchase Orders are not binding until confirmed by written acceptance by Seller, and are subject to these Terms and Conditions,
- B. Prices are based on the WIKAL USA Terms and Conditions of Sale; which are effective from date of publication and are subject to change without notice.
- C. The Parties may exchange orders, payments, acknowledgements, invoices, remittance notices, and other records ("Data") electronically, in place of tangible documents, and unless otherwise agreed shall exchange such Data in accordance with the American National Standards Institute Accredited Standards Committee X12 transaction sets (ANSI X12 Standards), and shall reasonably cooperate with requests to do so (including by providing documentation necessary to establish EDI). All Data transmitted pursuant to this clause shall be deemed to be a "writing" or "in writing" for purposes of the Uniform Commercial Code. Any such Data containing or having affixed to it a signature shall be deemed for all purposes to: (i) to have been "signed" and "executed," and (ii) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business. Data shall be exchanged by direct electronic or computer systems communication between Seller and Buyer or by indirect communications using a third party service provider to translate, forward and/or store such Data. Each Party shall be responsible for the cost(s) and associated cost(s) of any such third party service provider with which it contracts.

II. Amendments in Scope

No change will be made to the scope of work unless Buyer & Seller agree to change order in writing with agreement on changes in schedule, prices or any other T&C changes. If any new laws, regulations, codes, standards and/or requirements are implemented or invoked, Seller reserves the right to initiate a change order in order to compensate for any changes in price or time to performance.

III. Payment Terms and Sales Tax

- A. Standard Payment Terms are Net 30 days from invoice date.
- B. Buyer is responsible for all freight charges, taxes, and service fees.
- C. Seller reserves the right to revoke any credit extended to Buyer if Buyer fails to pay for any shipments when due. If, in Seller's opinion, there is any adverse change in Buyer's financial condition, Seller shall have the right to suspend further shipments until receipt of adequate assurance of Buyer's ability to pay therefore.
- D. Payment terms are specified on the invoice. Any invoice not paid when due is subject to a late payment charge of 1.5% per month, or if such rate is greater than the maximum rate permitted by applicable law, then at the highest rate allowed by applicable law. In the event that Buyer fails to make full payment when due and Seller employs an attorney or collection agency to assist in collection of the account, Buyer agrees to pay all of Seller's reasonable cost of collection, including collection agency fees and court costs.
- E. Unless otherwise stated, prices do not include sales, use, excise, and similar taxes applicable to either the products or the materials used in the manufacture of products or services. All such taxes and charges shall be shown on Seller's invoices.
- F. Seller reserves the rights to make deliveries in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries.

IV. Transportation

- A. All shipments are Ex Works, (INCOTERMS 2020), Seller's loading dock, except as expressly provided below.
- B. Each shipment is deemed accepted and in good condition by the common carrier and title and all risk of loss or damage shall transfer to Buyer at this point.
- C. Freight, handling, insurance, and storage charges:
 - 1. Prepaid Shipments: All freight, handling, and insurance charges shall be invoiced to Buyer.
 - 2. Collect Shipments via UPS or FedEx: All freight and handling charges shall be billed to the collect account number provided. Collect shipments are NOT insured. Buyer must request coverage if required and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of the Buyer. Seller assumes no responsibility for any such loss or damage.
 - 3. In the event that Buyer will not accept delivery of product on agreed upon date, Seller reserves the right to charge storage fees at the sole discretion of the Seller.
- D. All shipments are made by carriers of Seller's choice. Any special arrangements requested by Buyer will be at Buyer's additional expenses.
- E. Buyer shall report any quantity shortages, incorrect items, or billing errors in writing to the Seller within fifteen (15) days of delivery. Sales order and invoice numbers are to be furnished on all claims.

V. Returns

No return shall be accepted without a Seller-furnished Return Material Authorization (RMA #). Please reference the Seller Return Material Authorization (RMA) Policy for Seller Products.

VI. Limited Warranties

- A. Unless otherwise agreed to in writing, Seller warrants that Seller's products, when shipped, will meet Seller's published specifications and that Seller's work (including services and installation) will be performed in a workmanlike manner. All claims under this warranty must be made in writing immediately upon discovery and except as noted below, within 1 year from installation date or eighteen (18) months from shipment. All claims for services and/or installation must be made in writing immediately upon discovery and within one-year after shipment of applicable work by Seller. Any product which is determined by Seller to be defective and returned to Seller shall be, as Buyer's sole and exclusive remedy, repaired, replaced or credited, at Seller's option. Normal erosion, corrosion due to use, or any damage caused by modifications made by Buyer's, improper handling during transit, storage, or installation, are not covered by this warranty.
- B. THE FOREGOING LIMITED WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER, AND SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE HEREUNDER. SELLER DISCLAIMS ANY LIABILITY FOR PRODUCT DEFECTS THAT ARE DUE TO PRODUCT MISUSE, IMPROPER USE, DAMAGE, IMPROPER PRODUCT SELECTION OR MISAPPLICATION.

VII. Indemnification

Buyer shall indemnify, defend and hold harmless Seller from any third party claims related to the use of the product including any claims related to product misuse, improper use, damage from improper product selection, or misapplication. Seller agrees to give prompt notice of an indemnified claim to Buyer (in all cases within a time period that does not prejudice Buyer) and Buyer shall have the right to provide and control the defense. Buyer shall not make any admission prejudicial to the Seller.

VIII. Confidentiality; General

Except as otherwise permitted herein, Buyer will not disclose to any third party, or make any use of the Seller's Confidential Information. Buyer will use at least the same standard of care to maintain the confidentiality of the Seller's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than a reasonable degree of care. Except in connection with any software purchased by Buyer, the non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of five (5) years after Buyer's receipt of that item. However, Buyer's obligations to maintain purchased software as confidential will survive in perpetuity. "Confidential Information" means non-public information of Seller that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information of Seller includes, without limitation, the Software, pricing, and technical product information. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Buyer; (ii) Seller regularly discloses to third parties without restriction on disclosure; (iii) Buyer obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iv) is independently developed by Buyer without access to Seller's Confidential Information.

WIKAL USA

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IX. Confidentiality; Intellectual Property, Patents, & Copyrights

In addition to Seller's rights in the Software, Seller reserves all other rights in all Seller intellectual property, including without limitation offer documents, particular illustrations, drawings, calculations, brochures, catalogs, models, samples, and tools. Such documents must not be made available to third parties without written consent from Seller. Buyer, upon Seller's request, will return all offer documents that are no longer necessary in the ordinary course of business. For orders according to Buyer specifications, Buyer is liable for third-party rights or property rights and indemnifies Seller against such claims.

Seller agrees to indemnify, defend and hold harmless Buyer against any claims, suits, actions or proceedings claiming the infringement of intellectual property rights by any Seller designed product. Seller agrees, at its choice, to either pay for costs of such defense, including reasonable legal fees, provide a non-infringing replacement, or refund to Buyer the amount that Buyer paid Seller for the infringing product (including any Software). The foregoing is Buyer's sole and exclusive remedy for a claim of infringement of intellectual property by any Seller designed product.

X. Limitation of Liability

UNLESS APPLICABLE LAW OTHERWISE REQUIRES, SELLER'S TOTAL LIABILITY TO BUYER, BUYER'S CUSTOMERS OR TO ANY OTHER PERSON, RELATING TO ANY ORDER OR PURCHASE OF ANY PRODUCTS (INCLUDING ANY SOFTWARE) OR SERVICES, FROM THE USE OF THE PRODUCTS FURNISHED OR SERVICES RENDERED OR FROM ANY ADVICE, INFORMATION OR ASSISTANCE PROVIDED BY SELLER (BY ANY METHOD, INCLUDING A WEBSITE), IS LIMITED TO THE PRICE RECEIVED BY SELLER FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM. BUYER'S FAILURE TO TIMELY SUBMIT A CLAIM HEREUNDER SHALL WAIVE ALL CLAIMS FOR DAMAGES OR OTHER RELIEF INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON LATENT DEFECTS. NEITHER SELLER NOR ITS VENDORS SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PENAL DAMAGES (INCLUDING, BUT NOT LIMITED TO BACK-CHARGES, LABOR COSTS, COSTS OF REMOVAL, REPLACEMENT, TESTING OR INSTALLATION, LOSS OF EFFICIENCY, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED PRODUCTS, DAMAGE TO ASSOCIATED PRODUCTS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF PRODUCTS, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME, OR CLAIMS FROM BUYER'S CUSTOMERS OR OTHER PARTIES). IF SELLER FURNISHES BUYER WITH ADVICE OR OTHER ASSISTANCE WHICH CONCERNS ANY PRODUCTS SUPPLIED HEREUNDER, OR ANY SYSTEM OR EQUIPMENT IN WHICH ANY SUCH PRODUCTS MAY BE INSTALLED, THE FURNISHING OF SUCH ADVICE OR ASSISTANCE IS GRATUITIOUS AND WILL NOT SUBJECT SELLER TO ANY LIABILITY, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS.

XI. Cancellation Charges

Unless otherwise agreed to, Seller may impose cancellation charges equal to the cost of raw materials purchased by Seller and labor and materials costs incurred plus reasonable profit (and not otherwise mitigated), dedicated to cancelled products prior to the date of Buyer's cancellation notice. A 25% cancellation fee will be assessed against the cancelled items if engineering calculations and drawings (if needed) are completed prior to the date of Buyer's cancellation notice.

XII. Force Majeure

Seller shall not be liable for failure to deliver or delay in delivery of the services occasioned by causes beyond Seller's control, including without limitation, strikes, lockouts, fires, embargoes, pandemics, epidemics, quarantines, terrorist attacks, war or other breakouts of hostilities, acts of God, inability to obtain shipping, space, machinery breakdowns, delays of carriers, raw material providers or other suppliers or subcontractors, and domestic or foreign governmental acts or regulations.

XIII. Arbitration; Controlling Law; Jurisdiction and Venue

- A. Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement, or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Atlanta, Georgia, USA. The arbitrator shall apply the laws of the State of Georgia, to all issues in dispute. The controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- B. This Agreement shall be governed, controlled, interpreted and defined by and under the laws of the State of Georgia without regard to conflicts of law provisions thereof. The parties agree that the courts of Fulton County in the State of Georgia, and the U.S. District Court for the Northern District of Georgia, Atlanta Division shall be the exclusive jurisdiction and venue for all legal proceedings that are not arbitrated under these Terms and Conditions and RMA Policy

XIV. Assignment

An order shall not be assigned by either party without the written consent of the other. Consent will not be required, however, for internal transfers and assignments as between either party and its affiliates under common ownership, and nothing herein shall limit either party's right to factor or sell receivables.

XV. Export Compliance

Buyer acknowledges that the product is subject to U.S. export control laws, rules and regulations including, but not limited to: Export Control Reform Act of 2018 (50 U.S.C. 4801-4852); The Arms Export Control Act of 1976 (22 U.S.C. § 2751 et seq.); The Export Administration Regulations (15 C.F.R. § 730 et seq.); The International Traffic in Arms Regulations (22 C.F.R. § 120 et seq.); and The International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.). Buyer shall comply with all applicable export control and trade embargo laws, rules and regulations and shall not resell, export, re-export, distribute, transfer or dispose of the product, directly or indirectly, without first obtaining all necessary written consents, permits and authorizations and completing such formalities as may be required by any such laws, rules and regulations. Buyer acknowledges that any diversion of these commodities contrary to the afore-mentioned laws, rules and regulations is prohibited. Failure by Buyer to comply with all applicable export control and trade embargo laws, rules and regulations shall constitute a material breach of these Terms and Conditions of Sale. Seller assumes no responsibility or liability for Buyer's failure to obtain required authorizations. Buyer agrees to impose this same compliance requirement in its contracts with third parties pertaining to the product.

XVI. No Russia Clause

- (1) The customer shall not, at any time,
 - sell, and/or
 - export and/or
 - re-export,directly or indirectly, to the Russian Federation and/or to territories occupied by Russian Federation and/or for use in the Russian Federation and/or to territories occupied by Russian Federation any products supplied under or in connection with this Agreement.
- (2) The customer shall undertake its best efforts to ensure that the purpose of paragraph (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- (3) The customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (1).
- (4) Any violation of paragraphs (1), (2) or (3) shall constitute a material breach of an essential element of this Agreement and the WIKA shall be entitled to seek appropriate remedies, including, but not limited to:
 - i. termination of this Agreement; and/or
 - ii. a penalty of 10 % of the total value of this Agreement or price of the products exported, whichever is higher.
- (5) The customer shall immediately inform WIKA about any problems in applying paragraphs (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of paragraph (1). The customer shall make available to WIKA Information concerning compliance with the obligations under paragraph (1), (2) and (3) within two weeks of the simple request of such information.

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XVII. Compliance

The provisions of this Section XV shall apply to the extent that US manufacturing facilities are utilized for the purpose of a purchase order and as otherwise required by applicable law. To the extent not exempt, Buyer shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that the covered parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. To the extent Executive Order 13496 applies to these terms and conditions, the text of 29 C.F.R. Part 471, Appendix A to Subpart A (as amended, modified, restated or supplemented from time to time) is hereby incorporated by reference into this agreement as if set forth fully herein. Buyer and Seller shall comply with all requirements set forth in 29 C.F.R. Part 471, Appendix A to Subpart A., and all promulgated regulations applicable thereto.

XVIII. Miscellaneous

These Terms and Conditions constitute the entire understanding of the parties with respect to the subject matter of this agreement and merges all prior communications, understandings, and agreements. These Terms and Conditions may be modified only by a written agreement signed by the parties. Seller objects to and rejects any terms between Buyer and any other party, and no such terms, including but not limited to any government regulations or "flow-down" terms, shall be a part of or incorporated into any order from Buyer to Seller, unless agreed to in writing by an authorized representative of Seller.

The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. If any provision of These Terms and Conditions are declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of these Terms and Conditions, and these terms shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

WARNING: Seller's products may contain chemicals known to the State of California to cause cancer and/or reproductive harm.

XIX. Survival

The term and provisions of this Agreement that by their nature are intended to survive shall survive the termination or expiration of this Agreement and the delivery and performance of any product, Software, and/or service hereunder.

XX. Additional Terms and Conditions

In the event that Buyer purchases services or software from the Seller, the following Appendices shall be applicable in addition to the Terms and Conditions of Sale container herein:

1. [Annex A – Services](#)
2. [Annex B – Software](#)