

## APPENDIX A: GENERAL TERMS OF SALE AND CONDITIONS

### For US Market – iXblue Inc. / iXblue Defense Systems Inc.

Rev. January 1th, 2020

#### Article 1 – Approval of the General Terms of Sale

**1.1.** The purchase order and order acknowledgement (including any drawings and specifications expressly referenced therein) and these Terms and Conditions of Sale shall constitute the entire contract between SELLER and PURCHASER (collectively the “Agreement”), and shall supersede all prior communications or negotiations between the parties, whether written or oral, with the sole exception of any pre-existing non-disclosure or confidentiality agreement(s) in place between the parties, which shall remain in effect according to their terms. NOTWITHSTANDING ANY ADDITIONAL OR DIFFERENT TERMS THAT MAY BE EMBODIED IN A PURCHASE ORDER, AN ORDER IS ACCEPTED BY SELLER ONLY UPON THE ISSUANCE OF AN ORDER ACKNOWLEDGEMENT, INCLUDING THESE TERMS AND CONDITIONS. No statement, representation, covenant or warranty shall be binding on SELLER nor shall any provisions of this Agreement be changed or waived in any respect except in writing by an authorized representative of SELLER.

#### Article 2 – Confidentiality

**2.1.** Notwithstanding the obligations contained in any pre-existing non-disclosure or confidentiality agreement between the parties, PURCHASER agrees to maintain as confidential and proprietary any such material received by PURCHASER whether or not marked as such. SELLER reserves all rights with regard to the confidentiality, enforceability and ownership of its intellectual property rights, including but not limited to any and all trade secrets, proprietary processes, know-how, inventions and other proprietary business information of any kind, to the fullest extent permitted by law, and nothing contained herein or elsewhere in this Agreement shall be construed otherwise or shall entitle PURCHASER to any information or right of access with regard to SELLER’s facilities or intellectual property. All studies, schemes, drawings and other documents provided or sent by SELLER shall remain the property of SELLER and they may not be disclosed to any third parties by the PURCHASER for any reason whatsoever without the prior written authorization of SELLER.

**2.2.** PURCHASER shall not analyze, decompile, or reverse engineer or cause a third party to analyze, decompile or reverse engineer any product or intellectual property of the SELLER for any purpose.

#### Article 3 – Formation of the Sales Contract

**3.1.** Orders received from the PURCHASER will only be accepted upon SELLER’s receipt of all necessary export licenses and end user certificates... Any changes made to the offer, by the PURCHASER, in writing or otherwise, must be accepted in writing by SELLER. Changes to the offer presented herein, if accepted by SELLER, may delay availability of the system beyond quoted delivery times.

**3.2.** The terms set out in the quotations issued by SELLER shall be valid for a period defined under the section of the quote titled ‘Validity of the Offer’.

#### Article 4 – Delivery and Transportation of the goods

**4.1. Conditions** - Unless otherwise specified, the goods shall be deemed delivered to the PURCHASER at the designated SELLER facility (Ex Works per INCOTERMS 2010) upon remittance to a forwarder or a carrier designated by the PURCHASER to SELLER. The PURCHASER shall take delivery of the goods within fifteen days of the notification of availability. Upon expiration of this time period, the SELLER shall be entitled to consider the order cancelled by the PURCHASER.

**4.2. Delivery periods** - Deliveries shall be made according to the availability of goods, and in the order of receipt of the orders. The delivery period shall be stated in SELLER’s acceptance of the order. Should any deliveries be delayed for any reason beyond the SELLER’s control, the PURCHASER may not demand that the contract be cancelled or make a claim for indemnification for any damage sustained. Delays with respect to the delivery periods shall not give rise to any damages, countercharge, or cancellation of orders whether confirmed or in process. The SELLER may make partial or total deliveries.

#### Article 5 – Export and import obligations

**5.1. Import-** The PURCHASER agrees to be the importer of record and to manage all necessary customs requirements and paperwork. PURCHASER agrees to pay any and all customs, duty, tax or penalty. Delays due to import issues are not be the responsibility of SELLER.

**5.2 Export-** The PURCHASER acknowledges that the goods sold under this agreement may be subject to the export control laws of several countries. PURCHASER agrees to comply with any and all applicable export control laws and regulations. The failure to abide by such laws and regulations may result in the inability to deliver goods, fines, and the Customer could be subject to fines, penalties and criminal charges.

**5.3** The delay, denial or withdrawal of any export license by the competent authorities shall be considered as a force majeure event which may result, as the case maybe, in the cancellation of the concerned sale in whole or in part, without the SELLER being considered liable in any manner whatsoever for damages or compensation to the PURCHASER. For the purpose of the Agreement, a force majeure event shall be understood as an unpredictable, irresistible and beyond a party's control event.

#### Article 6 – Authorization to re-sell the goods

**6.1. End User** - The PURCHASER hereby certifies that it is the end user of the goods or the inclusion of the goods into another product of the PURCHASER is in the PURCHASER's normal course of business. SELLER may require prior authorization in writing, for PURCHASER to re-sell the goods. PURCHASER will not supply equipment to anyone other than the designated PURCHASER defined in the End-User Certificate. Delivery of Product to PURCHASER may require authorization from one or more Government export agencies and the issuance of export licenses. The PURCHASER may not pledge the goods delivered, or use them as security, or transfer the title thereto, even as a guarantee, without the prior written agreement of SELLER. Once goods have been delivered, the PURCHASER has the continuing obligation to abide by applicable export laws and regulations.

#### Article 7 – Authorization to transform the goods

**7.1.** The PURCHASER is not authorized, to transform the goods without the prior written approval of SELLER

#### Article 8 – Price of the goods

**8.1. Pricing** - All prices stated are prices before tax and are in US dollars, as communicated to the PURCHASER. The goods are invoiced at the prices in the confirmation of the order. Any taxes, charges or duties payable under any law foreign or domestic (import or transit country, etc.) shall be borne by the PURCHASER. Unless otherwise specified, the packaging, transportation, insurance and other costs shall always be borne by the PURCHASER.

**8.2. Terms of payment** - The price shall be invoiced to the PURCHASER when the goods are:

- delivered as described in the offer and payable cash; or
- remitted to the carrier,

and shall be paid by bank transfer on the date, and according to the bank details defined within the SELLER quote.

**8.3. Sanctions and penalties applicable in case of non-payment or late payment** - In case of late payment, or non-payment, SELLER shall have the sole right to suspend the execution of the confirmed orders in process, without prejudice to any other right or action that SELLER may use or take in order to obtain the cancellation of the confirmed orders and/or damages. Also, as a penalty clause and without prior notice, the PURCHASER shall be liable for a late fee of [one percent (1%) per month OR eighteen percent (18%) per annum] or the highest rate allowed under the law, whichever is lower, on any overdue amounts. PURCHASER also agrees to pay SELLER all reasonable costs and expenses of collection, including attorneys' fees. The SELLER may decide to cancel the sale for good reason, without prior notice and the SELLER may obtain injunctive relief to seek the return of goods, without prejudice to any other claims for damages. The SELLER may also decide to cancel for good reason and without prior notice confirmed orders in process and any prior orders, whether already delivered or in the delivery process, and for which payment is due.

#### Article 9 – Retention of title to the goods

**9.1.** SELLER shall keep title to the goods sold until the price has been paid in full, including the principal, and any applicable interests and penalties. For the purpose of this clause, the remittal of an instrument giving rise to an obligation to pay (bill of exchange, or any other mode of payment) shall not be held as effective payment. Any failure to pay any sums payable by a due date shall entitle the SELLER to reclaim the goods. In case of a seizure, or in case of intervention of a third party, the PURCHASER shall notify SELLER immediately and shall inform the said third party of the retention of title by SELLER. The above provisions shall not preclude the transfer to the PURCHASER, upon delivery, of the risks of loss and damage to the goods sold, and the risks of damage that the goods may cause.

## Article 10 – Return of the goods

**10.1.** Without prejudice to any claims against the carrier, all claims for defects, or nonconformity of the goods delivered shall be notified not later than ten (10) days after the ex-works delivery. The PURCHASER shall provide the SELLER with all evidence and proof of the purported defects.

**10.2.** The PURCHASER shall fully allow the SELLER to remedy such anomalies and shall refrain from intervening himself or having any third party intervene for that matter. SELLER shall not bear any cost associated with PURCHASER's disassembly, assessment or attempted repair of suspected defective goods. Any return of goods shall be agreed upon in a written agreement between the SELLER and the PURCHASER, and all costs and risks associated with the return of the goods shall be borne by the PURCHASER. Should any defect or non-conformity be observed on the goods, the PURCHASER may request to have the goods repaired or replaced at no extra cost, or reimbursed, without any other indemnification. The decision to repair or replace the item is at the sole discretion of the SELLER.

## Article 11 – SELLER's contractual warranty

**11.1. Terms of the contractual warranty** - The goods sold are guaranteed against any such operating defects as may result from defective design or assembly, as set out below. Notification of an operating defect must be provided during the period of twelve months following delivery. Warranty is only valid for equipment operated correctly and for the intended purpose of the goods. The following non exhaustive list of exclusions applies to the warranty on goods supplied:

- if the component used, or the defective design of the goods is attributable to specific requirements of the PURCHASER;
- if the operating defect was caused as a result of a change to the goods that was performed without the SELLER's prior approval; if the operating defect was caused by abnormal use and/or use without complying with the intended function of the goods;
- if the failure was caused by deterioration of the product due to abnormal environmental exposure, or by negligence or by improper maintenance on the part of the PURCHASER;
- if the PURCHASER opens or otherwise interferes with the goods;
- if the product is subject to significant shock;
- if the failure was caused by force majeure.

**11.2. Enforcement of the contractual warranty** - As part of the warranty, the SELLER shall decide whether to repair or replace the goods and/or any parts recognized as defective by his own technical experts, at no extra costs. This warranty shall cover the labor costs of the following operations: disassembly, reassembly, at the SELLER's plant. The replacement of goods and/or parts shall not cause the warranty period in Article 11.1 above to be extended.

**11.3. Limitation of the contractual warranty** - It is expressly agreed between the parties that the PURCHASER's sole remedy in case of an operating defect on the goods shall be limited to the above provisions.

## Article 12 – Automatic cancellation and termination

**12.1.** Should the PURCHASER fail to fulfill one of his obligations, the contract may be cancelled for good reason, at the SELLER's request, without prejudice to any damages that may be claimed against the PURCHASER. Cancellation shall take effect automatically fifteen (15) days after a formal notice has been sent and has remained without effect.

**12.2** Upon termination or cancellation, the SELLER shall be paid for the goods and services delivered to the PURCHASER up to the termination or cancellation effective date.

## Article 13 – Cancellation of a clause

**13.1.** Should any provisions of these General Terms of Sale be made void or found to be unenforceable or illegal, such action shall not affect the other provisions herein or the validity of the General Terms of Sale as a whole.

## Article 14 – Choice of law and disputes

This Agreement has been made and entered into in the Commonwealth of Massachusetts and shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principles. The rights and obligations of the parties under this agreement shall **not** be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

Any dispute arising from this agreement and that cannot be settled by amicable arrangement shall be settled in state court in the Commonwealth of Massachusetts, of which both parties' consent to jurisdiction.

#### **Article 15- Limitation of Liability and Indemnification**

In no event shall SELLER be liable to the PURCHASER for any indirect, consequential punitive or multiple damages arising out of this agreement. Purchaser agrees to hold harmless, defend and indemnify SELLER, its affiliates and parent company for any actions brought against SELLER regarding this agreement including but not limited to the violation of export control laws and regulations. Notwithstanding anything to the contrary under this Agreement, the total damages available to the PURCHASER in the event of any liability arising out this agreement shall not exceed one half the value of the order in question, including regarding warranty expense, or in case of termination.

#### **Article 16 – Intellectual Property**

**16.1** All the intellectual property rights, protectable or not, related to the goods and/or services provided and/or developed under the orders, including without limitation rights related to studies, know-how, software, firmware, patents, schemes, models, drawings and any other documents provided or sent by SELLER shall remain, the property of SELLER and shall not be assigned to any third party without the prior written approval of an authorized representative of SELLER.

**16.2** As a consequence, SELLER shall grant to PURCHASER a non-exclusive right of use of the intellectual property right belonging to SELLER for the purpose of using goods and/or services for the PURCHASER own needs. This right of use is granted for the whole world, for the whole protection period of said rights and against payment of the Order price.

**16.3** The PURCHASER shall take all necessary measures in order to:

- Ensure that any person or entity under its authority (including the PURCHASER's staff, partners, joint contractors, subcontractors, etc) will protect and comply with the intellectual property rights (patents, drawings, designs, etc) belonging to SELLER or used by SELLER under third party's license in any;
- Securely handle any "industrial secret" attached to technical documents, studies, information or know-how which the PURCHASER or any other person or entity under its authority would have access to.

#### **Article 17 – Software**

**17.1** Under this article, the word "Software(s)" means any software or firmware in the goods provided by SELLER to PURCHASER within an order placed by the PURCHASER.

**17.2** Without prejudice to article 2 of these Terms and Conditions of Sale and subject to the specific provisions of the software license associated to the concerned Software which, as the case may be, shall prevail, for any Software provided by SELLER, the PURCHASER shall only have a right to use said Software for its own purposes, to the exclusion of any other right. In particular, no source code of the Software shall be assigned or transferred to the PURCHASER. These restrictions shall not be construed as restricting the property rights of the PURCHASER over the tangible support of any such Software.

**17.3** It shall be the PURCHASER's exclusive responsibility to ensure that PURCHASER's hardware and software environment is compliant and suitable for the use of the Software.

**17.4** SELLER's liability shall be excluded:

- With regard to the use of Software by the PURCHASER and of the results so generated by the PURCHASER. The use of the Software shall be under sole and exclusive responsibility of the PURCHASER.
- With regard to the consequences, of whatever kind, resulting from a Software modification to the sole initiative of the Customer or from the integration of the Software, without SELLER's consent, within a PURCHASER's larger hardware or software package.

#### **Article 18 – Specific provisions for goods dedicated to aeronautical and space activities**

**18.1.** PURCHASER shall expressly notify to SELLER the PURCHASER's aeronautical purpose intended for the purchased goods. Failing that, SELLER's liability to the PURCHASER for any kind of damage shall be excluded for breach of duty of information by the PURCHASER and the PURCHASER shall save, defend and indemnify SELLER against all kind of consequences resulting from the use of the goods for aeronautical purpose.

**18.2.** Without prejudice to the foregoing and to the provisions of article 11 above, for the supply of goods for space purposes, SELLER's liability to the PURCHASER for any kind of damage (whether contractual or tort) as well



as the contractual warranty shall be excluded and shall cease upon launching of the space launcher (being understood as when said launching cannot be stopped anymore).