



GENERAL TERMS AND CONDITIONS OF PURCHASE

All Purchase Orders accepted by Avwatch, Inc. (hereinafter "Seller") are subject to the terms and conditions set forth herein. Seller hereby objects to any additional or different terms and conditions proposed by the customer (hereinafter "Buyer"). Any such proposed terms and conditions shall be void, and the terms and conditions herein shall constitute the complete and exclusive statement of the terms and conditions of any Purchase Orders between the parties. When used in these terms and conditions, the word "Items" or "items" means the material, equipment, parts and/or work or services sold to Buyer pursuant to this Purchase Order.

- 1. Acceptance and Modifications.** A Purchase Order submitted by Buyer shall constitute an offer. Acceptance by Seller is expressly limited to the terms and conditions herein and is evidenced by commencement of performance. No changes or modifications to a Purchase Order, once submitted, will be valid unless agreed to in writing by Seller, at Seller's sole discretion.
- 2. Assertion of Data Rights.** The intellectual property rights of the items and systems offered, including all software, firmware, and hardware, and all associated patents, trademarks and other intellectual property rights, are owned exclusively by Seller and are not deliverable to Buyer. Seller's assertion of its data rights shall in no event be construed to limit Buyer's right to use, distribute, sell, and resell in the ordinary course of business any Items that Buyer purchases from Seller.
- 3. Payment Terms.** Payment terms are listed on the price quote provided by Seller to Buyer in advance of each Purchase Order. For Buyers that qualify for any payment terms other than those requiring full payment to be submitted with the Purchase Order, the "net" days applicable to the payment terms shall be calculated from the day Buyer ships the Items. All shipments will include either a payment receipt or an invoice, as applicable, along with such supporting documentation as Buyer reasonably requests. Buyer has three (3) days from receipt of the items to inspect the merchandise for defects. Any merchandise not rejected within three (3) days from receipt thereof shall be considered accepted by Buyer. Should Buyer wish to reject any merchandise within three (3) days from receipt thereof, Buyer shall inform Seller in writing of Buyer's wish, and Seller shall instruct Buyer how to proceed in terms of shipping back the rejected merchandise. In the case of disputed invoices, Buyer shall pay the amount not in dispute pursuant to the terms stated above. Buyer shall not be obligated to pay the amount in dispute until the dispute is resolved. No late payment charges will be assessed against the amount in dispute during the period of the dispute. In all other cases, late payment charges shall accrue at a rate of one and one-half percent (1.5%) per month and eighteen percent (18%) per annum for all unpaid amounts.



4. Termination. Buyer may, by written notice, terminate a Purchase Order for convenience and without cause, in whole or in part, at any time, fifteen (15) days prior to scheduled delivery of Items, and such termination shall not require any payment to Seller for scheduled delivery of Items. In the event of termination by Buyer less than fifteen (15) days prior to scheduled delivery of Items, Seller shall be paid for fifty percent (50%) of Items ordered.
5. Warranty
 - 5.1 Statement of Quality. All Items supplied under Purchase Orders that are the subject of these Terms and Conditions are assembled, tested, and inspected prior to shipment in accordance with the Avwatch, Inc.'s Quality Control Plan, and meets the requirements established therein.
 - 5.2 Repair or Replacement. Seller will repair any Item that is the subject of a valid warranty claim and that can be returned to full functionality with said repair. Seller will replace any Item that is the subject of a warranty claim only if said Item cannot be returned to full functionality through Seller's repair process. All communications related to this Section 5.2 must be initiated by Buyer via e-mail to Seller.
6. Technical Support for Items. Technical Support is included in the price of the Items, and is available to Buyer by phone or e-mail at operations@avwatch.us.
7. Shipping.
 - 7.1 Packing and Shipping. Packing charges are Buyer's responsibility. Seller shall ship Items via FedEx Ground at Buyer's expense, unless Buyer requests expedited FedEx shipping in writing. All shipping charges, whether standard or expedited, are Buyer's responsibility.
 - 7.2 Title to Items. Title to Items, and risk of loss, shall pass to Buyer upon shipment of Items from Seller's facility.
 - 7.3 Packaging Specifications. Seller will pack Items for safe transit in standard shipping containers. Depending upon the size of a Purchase Order, Seller may choose, at its sole option, to pack and ship Items in bulk. All standard containers used by Seller, whether for individual or bulk shipping, conform to the requirements of the Avwatch, Inc.'s Quality Control Plan (see Section 5.1 above). Custom packing and/or shipping is available by special request only, and Seller will price custom requests for Buyer on an order-by-order basis.
 - 7.4 Labeling Specifications. Items are labeled on their packaging, as determined by the Seller. Items packed in bulk may, at Seller's sole discretion, utilize one label identifying the Item(s) and the quantities in which the Item(s) are packed. Custom labeling is available by special request only, and Seller will price custom requests for Buyer on an order-by-order basis.
8. No Press Release. No press release, public announcement, confirmation or other information regarding orders for the Items may be made by Buyer without the prior



written approval of Seller.

9. Use of Seller's Name and Trademarks. Buyer shall not use the Seller's name or derivations, trademarks, trade dress, logos or the equivalent thereof in advertising or sales materials or in any other manner whatsoever without prior express written approval of Seller. If Seller provides prior express written approval for the use of its name, Seller further reserves the right to revoke the right to use its names at any time. Buyer shall be allowed to use Seller's Wave Relay® decal on the Items, and a Wave Relay® decal supplied by Seller will be clearly displayed on the Items.

10. Indemnity.

10.1 Seller. The Seller agrees to defend, indemnify and hold Buyer and all of its respective directors, officers, personnel, successors, assigns, and customers, harmless from any and all expenses, damages, awards, claims, actions, demands, losses, liabilities and causes of action (including, but not limited to, attorneys' fees and expenses) arising out of or related to infringement or an alleged infringement of any patent, copyright, Trade Secret, trademark or other Intellectual Property right for or on account of using, offering for sale or selling the Items furnished by Seller to Buyer. Seller shall defend and settle all suits brought against Buyer at the sole expense of Seller. Buyer shall give Seller prompt notice of any claim subject to indemnification of which it is formally notified. The failure of Buyer to provide Seller with prompt notice does not relieve Seller of its obligations under these Terms and Conditions unless such failure to promptly notify Seller causes irreparable harm. In all events, Buyer has the right at its own expense to participate in the defense of any such suit or proceeding through counsel of its own choosing.

10.2 Buyer. The Buyer agrees to defend, indemnify and hold Seller and all of its respective directors, officers, personnel, successors, assigns, and customers, harmless from any and all expenses, damages, awards, claims, actions, demands, losses, liabilities and causes of action (including, but not limited to, attorneys' fees and expenses) arising out of or related to infringement or an alleged infringement of any intellectual property right caused solely by Buyer. Buyer shall defend and settle all suits brought against Seller at the sole expense of Buyer. Seller shall give Buyer prompt notice of any claim subject to indemnification of which it is formally notified. The failure of Seller to provide Buyer with prompt notice does not relieve Buyer of its obligations under these Terms and Conditions unless such failure to promptly notify Buyer causes irreparable harm. In all events, Seller has the right at its own expense to participate in the defense of any such suit or proceeding through counsel of its own choosing.

11. Product Liability.

11.1 Seller. Seller agrees to defend, indemnify and hold Buyer and all of its



respective directors, officers, personnel, successors, assigns, and customers, harmless from any and all expenses, damages, awards, claims, actions, demands, losses, liabilities and causes of action (including, but not limited to, attorneys' fees and expenses) arising out of or related to: a negligence claim, a strict liability claim, or another claim involving the design and/or manufacture of the Items. Seller shall defend and settle all suits brought against Buyer at the sole expense of Seller. Buyer shall give Seller prompt notice of any claim subject to indemnification of which it is formally notified. The failure of Buyer to provide Seller with prompt notice does not relieve Seller of its obligations under these Terms and Conditions unless such failure to promptly notify Seller causes irreparable harm. In all events, Buyer has the right at its own expense to participate in the defense of any such suit or proceeding through counsel of its own choosing.

11.2 Buyer. Buyer agrees to defend, indemnify and hold Seller and all of its respective directors, officers, personnel, successors, assigns, and customers, harmless from any and all expenses, damages, awards, claims, actions, demands, losses, liabilities and causes of action (including, but not limited to, attorneys' fees and expenses) arising out of or related to: a negligence claim, a strict liability claim, or another claim involving the misuse of the Items. Buyer shall defend and settle all suits brought against Seller at the sole expense of Buyer. Seller shall give Buyer prompt notice of any claim subject to indemnification of which it is formally notified. The failure of Seller to provide Buyer with prompt notice does not relieve Buyer of its obligations under these Terms and Conditions unless such failure to promptly notify Buyer causes irreparable harm. In all events, Seller has the right at its own expense to participate in the defense of any such suit or proceeding through counsel of its own choosing.

11.3 United States Export Control Laws and Regulations. Seller's Items are subject to the Export Administration Regulations (EAR) promulgated by the United States Department of Commerce. It is the Buyer's responsibility to adhere to all export control laws in connection with Seller's Items.

12. RoHS Compliance. Seller's Items are RoHS compliant, except in instances where Buyer specifically requests a non-compliant component.

13. FCC and Other Compliance. Seller's Items are not certified by the FCC. It is the Buyer's sole responsibility to ensure that Items purchased from Seller are operated in a manner that is legal under the laws, whether promulgated by the FCC or other governmental bodies, of the country where the Items are operated. Seller is not liable for improper or impermissible use by Buyer of the Items.

14. General.

14.1 Binding Effect. These Terms and Conditions will be binding upon and



inure to the benefit of the parties hereto and their respective successors and permitted assigns.

- 14.2** Governing Law. The laws of the State of Massachusetts, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to these Terms and Conditions, including, without limitation, its validity, interpretation, construction, performance, and enforcement. The provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to these Terms and Conditions.
- 14.3** Venue. The parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Massachusetts for the purposes of adjudicating any matter arising out of or relating to these Terms and Conditions.
- 14.4** Notices. Any notice required or permitted under these Terms and Conditions is to be given in writing and is deemed effectively given: (a) upon personal delivery to the party to be notified; (b) upon confirmation of receipt by fax by the party to be notified; or, (c) deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth in this section and upon confirmation of delivery by said courier. Any notice required to be given to the Seller under these Terms and Conditions is to be delivered to:

Avwatch, Inc.
Amanda DeVellis
246 S Meadow Rd
Gate 6 Bldg S-2
Plymouth, MA 02360

- 14.5** No Waiver. The failure of a party to enforce a provision or to exercise a right under these Terms and Conditions shall not be considered a general waiver. The express waiver of a provision is to be effective only in the specific instance, and as to the specific purpose, for which it was given.
- 14.6** Severability. If any provision of these Terms and Conditions is determined to be invalid, illegal or unenforceable, the remaining provisions of these Terms and Conditions remain in full force and effect.
- 14.7** Section Headings and Captions. The section headings and captions contained in this Terms and Conditions are for convenience only and do not affect the construction or interpretation of any provision herein.
- 14.8** Remedies. Unless stated otherwise, all remedies provided for in these Terms and Conditions Agreement are to be cumulative and in addition to, not in lieu of, any other remedies available to either party at law, in equity or otherwise.
- 14.9** Compliance with Applicable Laws. The parties shall at all times conduct their activities hereunder in compliance with all applicable laws, rules, and regulations of the United States of America.
- 14.10** Non-Agency. Nothing in these Terms and Conditions, and no conduct, communication, trade practices, or course of dealing, shall be interpreted



or deemed to create any partnership, joint venture, association, agency, syndicate, or fiduciary relationship between the parties or their subsidiaries or affiliates. Nothing in these Terms and Conditions gives either party the right, power, or authority to make any statements, commitments, or agreements that bind the other party.

- 14.11 Entire Agreement.** These Terms and Conditions are intended by the Buyer and Seller as a final expression of their agreement and are intended also as a complete and exclusive statement of the terms and conditions of Buyer's Purchase Order(s). No amendment, waiver or modification of these Terms and Conditions is binding unless in writing and signed by authorized representatives of both parties.
- 14.12 Signatures.** Facsimiles, photocopies or other electronic reproductions or copies of original signatures are deemed as legally enforceable as the originals thereof.
- 14.13 Survival.** Upon termination or expiration of these Terms and Conditions for any reason, any section that by its nature should survive this Agreement will survive and continue in effect and be binding upon the parties.