



## TERMS AND CONDITION OF SALE

- 1. APPLICABILITY.** These Terms and Conditions of Sale ("Terms") are the only terms and conditions which govern the sale of the goods ("Goods") by Veridiam, Inc. ("Seller") to buyer ("Buyer") and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms.
- 2. ENTIRETY.** These Terms represent the final and complete understanding of the parties and may be amended or cancelled only by written agreement signed by both parties. Acceptance is expressly limited to these Terms. Any proposal for additional or different terms or any attempt by Buyer to vary in any way any of the provisions of these Terms is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to these Terms. Unless otherwise stated herein, Buyer's receipt of any portion of the Goods shall constitute acceptance of these Terms. Notwithstanding anything herein to the contrary, if the parties have executed a written contract covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- 3. PRICES.** Prices quoted are based on the price at the time of quotation and are subject to change without notice. Clerical errors are subject to correction.
- 4. TAXES.** Prices do not include any sales, use, excise, privilege, or other taxes or assessments now or hereafter imposed or levied by or under the authority of any federal, state, or local law, rule, or regulation concerning the Goods sold hereunder or the manufacture or sale thereof. If Seller pays any such taxes or assessments, Buyer shall, upon demand, immediately reimburse Seller for such amounts.
- 5. TERMS OF PAYMENT.** All payments are due net 30 days from date of invoice. All orders are subject to acceptance in writing by Seller. No discounts shall be taken unless specifically allowed in writing by Seller. All amounts due Seller from Buyer shall be paid without abatement, deduction, or setoff. The date of payment of an invoice shall be the date the payment is received by Seller at the location designated on the invoice. Invoices not paid when due are subject to a late payment service charge of the lesser of 1.5% per month or the highest rate permitted under the law, calculated daily and compounded monthly. If Buyer fails to make any payment when due, Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys' fees and costs. If in Seller's judgment, the financial condition of Buyer does not justify continuance on the terms of payment above, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer.
- 6. FREIGHT.** Unless agreed by Seller in writing, all shipments shall be F.O.B. origin. Risk of loss or damage to Goods shall pass to Buyer upon delivery to Buyer, to its designated agent, or to a carrier for delivery to Buyer, whichever occurs first.
- 7. DELIVERY.** Shipping and delivery dates are estimates and are based upon prompt receipt of all necessary information from Buyer. Delays in securing Buyer's approval of any matter shall, at Seller's discretion, extend the date of delivery. Seller shall not be liable for any claim, Losses, expense, or damage of any kind whatsoever for delays, loss or damage in transit. Shipping tolerances are +/- 10%.
- 8. INSPECTION.** Buyer shall inspect the Goods upon arrival, and Buyer shall immediately notify Seller in writing of any claims that the Goods do not conform to Seller's warranty for such Goods. Failure to give such written notice during such period will constitute satisfactory shipment by Seller and irrevocable acceptance by Buyer of all Goods.
- 9. BLANKET ORDERS.** Buyer must take delivery of all Goods ordered under a blanket order within the agreed-upon time frame, which shall not exceed one year from the date of the blanket order, and all such deliveries shall be made in the agreed-upon release quantities.
- 10. CHANGES.** Changes in specifications or designs relating to any Goods, changes in delivery schedules, quantities, or cancellations of orders are not permitted unless Seller has accepted same in writing, has determined the additional charge to be made, if any, and the same has been paid by the Buyer.
- 11. PAYMENT OF GOODS IN PROGRESS.** Due to the uniqueness of the Goods produced to Buyer's applicable specifications, the parties specifically agree that once production has commenced and/or materials have been ordered, in the event that delivery cannot be made for whatever reason, including lack of payment by Buyer of already finished product, Buyer shall be responsible for the costs of the Goods in production, including materials, labor and overhead, regardless of delivery. For the avoidance of doubt, this includes materials on order that cannot be cancelled and/or cancellation fees charged. Value of the Goods in progress to be determined by Seller in its sole discretion based on market value and production costs.
- 12. RETURNS.** Goods may not be returned without prior Return Material Authorization ("RMA") from Seller and compliance with Seller's return policies and procedures. Requests to return Goods must be made within thirty (30) days after receipt of Goods by Buyer. Good must be received at Seller's facility within thirty (30) days of RMA number issuance to Buyer. Goods must be in like-new condition, in their original packaging and able to be returned to stock. Goods that are made to order, discontinued or custom products are not returnable for credit. All Returns are subject to a 25% restocking fee and must be shipped prepaid unless other arrangements are agreed upon and documented in writing in the RMA.
- 13. STORAGE.** In the absence of agreed shipping dates, Seller shall have the right to invoice Buyer and ship the Goods once they are ready for shipment. If, because of Buyer's inability to take delivery, the Goods are not shipped, stopped in transit or returned, Seller may have them stored for Buyer at Buyer's expense, risk, and account. In such case, risk of loss shall pass to Buyer when the Goods are placed in storage, and the date the Goods are placed in storage shall constitute the date of shipment for purposes of beginning the warranty and payment term periods.
- 14. LIMITED WARRANTIES.** Seller warrants that all Goods sold to Buyer shall, if properly selected, stored, processed and used by the Buyer, comply in all material respects with the chemical, physical and mechanical portions of Buyer's applicable specifications, as agreed to and accepted by Seller, and subject to Seller's standard manufacturing and commercial tolerances, variations and practices. **THE FOREGOING SENTENCE STATES SELLER'S SOLE AND EXCLUSIVE WARRANTIES. SELLER MAKES NO OTHER EXPRESS WARRANTIES AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Buyer shall provide written notice to Seller, within ninety (90) days from receipt of Goods ("Warranty Period"), of any nonconforming Goods. If Seller determines, after appropriate tests and inspection, that such Goods or part thereof are nonconforming, Seller will, as Buyer's sole and exclusive remedy, and at Seller's sole discretion, do one of the following: (i) repair the defective Goods or part thereof; (ii) replace the defective Goods or part thereof F.O.B. point of manufacture; or (iii) refund the purchase price thereof; provided, in all such cases, that Buyer returns such defective Goods or part thereof to

Seller's plant, freight prepaid. Any claims not made, in writing, within the Warranty Period are deemed waived by Buyer. Seller's warranty does not attach to Goods or parts thereof not manufactured by Seller. Seller will pass on to Buyer whatever warranty, if any, it receives from the manufacturer of such Goods or part, but only to the extent allowed by such manufacturer. Seller's aggregate liability to Buyer or anyone claiming through or on behalf of Buyer, with respect to any claim or Losses arising out of or relating to any Goods or alleged to have resulted from an act or omission of Seller, whether negligent or otherwise, and whether in tort, contract, or otherwise, shall be limited to an amount equal to the purchase price of the Goods or part thereof with respect to which such liability is claimed or, where appropriate and at the option of Seller, to repair or replacement of the Goods or part thereof. **UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES OR EXPENSES, INCLUDING, WITHOUT LIMITATION, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR DAMAGE TO PROPERTY, LOSS OF PROFIT OR REVENUES, DIMINUTION IN VALUE, COST OF SUBSTITUTE PRODUCTS, LOSS OF USE, DOWNTIME COSTS, OR CLAIMS OF BUYER'S CUSTOMERS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.** Seller shall have no obligation to provide insurance. Upon the occurrence of any event described in Section 15(i)-(vi), this warranty shall be void.

- 15. INDEMNIFICATION; LIMIT ON LIABILITY.** Buyer shall defend, indemnify and hold Seller, its representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages and expenses (including, without limitation, attorneys' fees) (collectively, "Losses"), including death or injury, arising out of or relating to (a) Buyer's or its agents provided specifications, structure, operation, material, method of making Goods or other directions including, without limitation, any resulting violation of intellectual or proprietary rights; (b) Buyer's use, misuse or disposal of Goods or materials; (c) noncompliance with any federal, state, or local law or regulation; and (d) breach of these Terms by Buyer, and (e) against all Losses which Seller may incur or become liable to pay which relate to or in any way arise out of Goods subjected to: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Goods; (v) repairs or modifications made to all or part of the Goods without the prior written consent of Seller; or (vi) a use or application other than, or varying in any degree from, the specifications and Seller's instructions (collectively, (a) through (e)(vi), the "**Buyer Liabilities**"). With the exception of (i) any Seller obligations relating to the Seller Infringement Indemnity specified in Section 16 below, and (ii) the Infringement Liability Limit applicable after a final judgment of infringement by any Goods sold to Buyer has been issued by a court of competent jurisdiction, Seller's complete and cumulative limit on liability relating to the Goods sold to Buyer including in relation to any action or claim relation to these Terms or any actions or inactions of Seller relating hereto shall be limited to a refund of the price of the applicable Goods sold to Buyer.

**16. PATENTS.** Except as provided in Section 14 (relating to Goods manufactured in accordance with specifications or directions provided by Buyer), and provided Buyer has made all payments due Seller, Seller shall defend, at its expense, any suit or proceeding brought against Buyer based upon any claim that the Goods or any part thereof infringe any United States patent issued as of the date of Seller's quotation and shall pay any damages and costs awarded therein against Buyer, provided that infringement is not predicated on any action or inaction of the Buyer or its affiliates or agents or representatives relating to any of the categories of Buyer Liabilities (such indemnity, the "**Seller Infringement Indemnity**"). Seller is notified promptly in writing of such claim and is given full authority, information and assistance by Buyer to defend or settle the suit. If the Goods or any part thereof are deemed to infringe any such patent, Seller shall, at its expense and sole option either and as the maximum and sole limitation of liability for the Seller in relation to any such infringement: procure for Buyer the right to continue using said Goods or part; replace them with non-infringing Goods or parts; modify them so they become non-infringing; or remove them and refund the depreciated purchase price for them (the "**Infringement Liability Limit**").

**17. TOOLING.** Any tools, jigs, dies, patterns, etc. (collectively, "Tooling"), which Seller owns, makes or acquires for the production of Goods for Buyer shall be and remain Seller's property, notwithstanding any charge Seller may have made therefor. In no event shall Buyer have any interest in any Tooling which is utilized in the production of Goods, or which has been converted or adapted by Seller for such use, notwithstanding any charge for any such utilization, conversion or adaptation.

**18. CONFIDENTIALITY.** All non-public, confidential or proprietary information of Seller is confidential, solely for the use of performing hereunder and may not be disclosed, used or copied unless authorized in advance by Seller in writing.

**19. FORCE MAJEURE.** Seller shall not be liable for any delay in or failure to perform due to any cause, matter or contingency beyond its reasonable control.

**20. TERMINATION.** Seller shall have the right to cease work or terminate these Terms or any purchase order, in whole or in part, at any time, without liability, if (i) Buyer is in breach or default of these Terms or any other agreement it has with Seller; (ii) a petition under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer; (iii) Buyer executes an assignment for benefit or creditors; (iv) a receiver is appointed for Buyer or any substantial part of its assets; or (v) Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance within ten (10) days after written request from Seller. Seller's right to cease work or terminate under this section is not an exclusive remedy. Seller shall be entitled to all other rights and remedies it may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

**21. WAIVER.** All waivers by Seller shall be in writing. Failure of Seller at any time to require Buyer's performance of any obligation hereunder shall not affect Seller's right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

**22. MISCELLANEOUS.** Buyer shall not assign any of its rights or obligations hereunder without Seller's prior written consent. Buyer shall comply with all applicable laws. There are no third-party beneficiaries of these Terms. These Terms shall be construed in accordance with the laws of the State of California without regard to any rules on conflicts of laws. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, these Terms shall be brought solely in the state or federal courts serving the State of California, County of San Diego, and the parties consent to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waive any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world. Provisions which by their nature should survive will remain in force after any termination or expiration. The section headings contained herein are not part of these Terms and are included solely for the convenience of the parties.