

1. **CONTRACT FORMATION; SCOPE:** (a) These Terms and Conditions are applicable to the purchase and sale of the goods described in the contract of which this document is a part and all subsequent dealings between Buyer and H2scan Corporation ("Seller"). They shall become binding and enforceable on (i) its being signed or accepted by the Buyer or its agent or broker; or (ii) if not so signed or accepted, upon its being delivered by the Seller to the Buyer, unless the Buyer gives the Seller written notice of objection to their contents within ten (10) days of Buyer's receipt hereof. (b) These terms supersede any terms proposed in Buyer's purchase order or any other document regardless of when dated or received. Any different or additional proposed terms are expressly rejected. Seller's acceptance of Buyer's order is expressly conditioned on Buyer's assent to the terms and conditions set forth on this form. No modification of these terms and conditions shall become effective unless in writing and signed by both parties. Any assortments or shipping instructions, whether oral or written, involving the goods covered hereby shall be deemed subject to all of the terms and conditions of this contract. (c) These terms and conditions shall govern any and all changes, cancellations, modifications, alterations or change orders made to the quantities, types, sizes or styles of goods sold hereunder.
2. **QUOTATIONS:** Quotations are held open for sixty (60) days from their date. Prices quoted will be firm for orders scheduled by Seller to be shipped within ninety (90) days after receipt of Buyer's written order; otherwise, Seller reserves the right to apply prices in effect at the time of shipment. Acknowledged prices are firm for the completion date stated in the acknowledgement unless otherwise specified. Prices are subject to adjustment when the completion date is extended for reasons beyond Seller's control. Prices do not include freight, insurance or sales, use, excise or other similar taxes, and all such taxes (if applicable) will be paid by Buyer. ALL ORDERS ARE SUBJECT TO ACCEPTANCE BY SELLER AT ITS FACTORY AND ARE SUBJECT TO CREDIT APPROVAL.
3. **DELIVERIES:** (a) If Buyer has specified more than one item or delivery date, Seller's obligation with respect to each item and delivery date shall be separate and distinct. Seller's failure to make delivery of any item or to meet any delivery date shall not affect any of Seller's obligations with respect to any remaining items or deliveries specified in this contract or any of Buyer's obligations with respect to such items or deliveries. Seller attempts to accommodate those needs of its customers who have an immediate need for its products. At times this will require payment of an expediting fee. Customers should generally allow for Seller's standard manufacturing lead times and confirm this when placing orders. (b) With respect to each delivery obligation contained in this contract: (i) Tender of a shipment to any licensed carrier shall constitute a delivery to Buyer, or, in the absence of shipping instructions, the mailing of Seller's invoice shall constitute a delivery. (ii) Delivery within sixty (60) days of the delivery date(s) specified in this contract shall be deemed full performance by Seller. (iii) Risk of loss or damage to the goods shall pass to Buyer upon delivery of the goods to a common carrier. (c) Any delivery not in dispute shall be promptly paid by Buyer, regardless of any dispute as to other delivered or undelivered goods. (d) Seller makes no charge for its standard packaging for U.S. shipment. Seller's standard packaging is not suitable for outside storage. Installation instructions and devices are provided with each shipment and should be used to avoid damage due to improper installation procedures. Delivery is F.O.B. shipping point. Shipments may be sent collect or third party billing via common carrier if oversized for UPS. Fed-Ex and UPS shipments are sent prepaid and Fed-Ex and UPS charges are added to the invoice. (e) Claims of late delivery are barred unless made prior to tender of goods to a licensed carrier for shipment. (f) If Seller should fail to meet any delivery schedule applicable to any shipment hereunder: (i) If delivery is delayed by events beyond Seller's control, including, but not limited to, strikes, insurrections, civil unrest, natural or man-made disasters, act of any government or any agency or subdivision thereof, judicial action, labor dispute, shortage of labor, shortage of fuel or raw materials, machinery or technical failure, health or safety hazards relating to processing a particular article, or Seller's inability to obtain materials or services through its regular sources, Seller's time for performance shall be extended by a time period which is reasonable considering the extent of the delay, (ii) If Seller is completely prevented from making delivery for any reason enumerated in subparagraph (i) above, Seller may cancel this contract without liability, Buyer remaining liable to pay for goods completed or shipments already made.
4. **PAYMENT AND CREDIT:** (a) Payment shall be made in U.S. dollars, Net 30 days after receipt of goods unless otherwise specified in this Purchase Order/Contract. (b) Seller may accept as partial payment sums which may become due hereunder any check or other tender of payment without entering into an accord and satisfaction and without prejudice to the Seller's right to the remainder due or to become due hereunder notwithstanding any terms or conditions endorsed on or stated in any communication related to such check or other tender. (c) Seller may apply any payment made or tendered by Buyer to any amount then due and owing to Seller by Buyer whether under this contract or otherwise. (d) A service charge will be charged on overdue payments at Seller's prevailing interest rate as of the invoice date. (e) Seller reserves the right to alter Buyer's credit limit, if any, at any time or to require payment before delivery or require prepayment of outstanding invoices notwithstanding any terms thereof. (f) Failure of Buyer to prepay when required shall give the Seller the option to cancel this contract or to delay delivery without otherwise affecting Seller's rights hereunder.
5. **TITLE TO GOODS; LIENS:** (a) Seller shall retain full title to all goods shipped to Buyer and all products and proceeds thereof until and unless Buyer has made payment in full for the goods and may exercise any and all rights of a secured party with respect to such goods under the Uniform Commercial Code or other comparable law. In the event Seller repossesses any such goods, Buyer agrees to indemnify and hold Seller completely harmless for the cost of disposing of them properly and in compliance with all applicable laws and regulations, including, without limitation, those concerning environmental protections and waste disposal. (b) Seller recognizes no lien upon or title or other interest in goods delivered to Seller excepting that of the person, firm, or corporation responsible to Seller for charges thereon, and, in the case of goods for which the United States has made partial or complete payments, under any applicable government contract, the United States. Subject to such recognized liens or rights, in addition to, and not in derogation of any other remedy or lien given by law, goods shipped to Seller are liable for payment of any of the Seller's charges for work done upon them or upon other goods, either pursuant to this contract or to any other contract, and for all other unpaid charges of any kind owing to Seller by the Buyer, and may be retained by the Seller to be sold at public sale or otherwise upon proper notice. Buyer shall be entitled to any excess received upon such sale after deduction of amounts owing to Seller plus costs and expenses of sale, including legal fees.
6. **WARRANTIES:** The use of an active gas sensor in a dynamic environment is subject to operational stresses which are unpredictable and require Buyer to maintain stringent safety requirements and thus impossible to lower with a functional warranty. Therefore, Seller warrants only that goods delivered hereunder shall, at the time of shipments, conform to the terms of any specification which Seller has agreed in writing applies to this contract, or, in the absence of such a specification, to representative samples of the same goods, if any, within variations customary in the trade and shall be free from defects in workmanship or materials for (12) months after their delivery to Buyer. Buyer shall be solely and exclusively responsible for the correctness of data supplied to Seller. All such data must appear on Buyer's purchase order. ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED AND EXCLUDED. Seller shall not be liable for any patent, copyright or trademark infringement claims arising out of the reliance by Seller on Buyer's specifications or data, and Buyer agrees to indemnify and hold Seller completely harmless with respect to any such claim. Seller's liability hereunder is limited to the repair or replacement of defective goods or, at Seller's sole and exclusive option, refund of the price paid for goods which it agrees are defective.
7. **LIMITATION OF LIABILITY:** Seller shall under no circumstances be liable for any incidental, consequential, special, punitive, or other damages, including, but not limited to, loss of business or profit, promotional or manufacturing expenses, injury to reputation, or loss of customer, based on any alleged negligence, breach of warranty, strict liability, breach of contract, or any other legal theory arising out of the use, misuse, purchase, sale or possession of its goods or its performance of this contract to the extent that such liability extends Seller's obligations beyond the price paid by Buyer to Seller for the item on which such claim is based. Seller advises Buyer to perform acceptable tests on all hardware prior to deployment and to perform maintenance as described in the Seller's instruction guide. UNDER NO CIRCUMSTANCES SHALL THE EQUIPMENT PROVIDED HEREUNDER BE USED IN A MANNER WHERE IT IS THE SOLE PROTECTIVE SYSTEM FOR FACILITIES, EQUIPMENT AND PERSONNEL SAFETY; THE EQUIPMENT IS INTENDED FOR USE IN CONJUNCTION WITH OTHER APPROPRIATE PROTECTIVE SYSTEMS.
8. **CLAIMS BY BUYER:** (a) In the event of any claim by Buyer regarding the quality of the goods delivered, such goods must be promptly offered to Seller for examination. If for any reason Buyer fails to afford adequate opportunity for examination by Seller, Buyer shall not be entitled to any reduction or claim based upon or relating to such goods. (b) Claims of any kind or nature, except for latent defects, must be made in writing within thirty (30) days after receipt of the goods by Buyer or its agent. (c) Seller shall have no obligation to replace goods claimed to be defective unless Seller receives representative samples of the goods and an opportunity to examine the goods at a place convenient to the Seller. (d) Buyer's right to reject goods by reason of defect shall at all times be limited to that portion of the goods actually defective. (e) No goods may be returned to Seller without its prior authorization.
9. **PROPOSED CHANGES:** (a) Any changes to the specifications or data provided by Buyer to Seller require written agreement between the parties. (b) If this is a contract with the U.S. Government or a subcontract at any tier under such a contract and if Seller furnished no cost or pricing data in order to obtain this contract, any adjustments in price will be agreed between the parties without any requirement that Seller furnish cost or pricing data in support of any claim regarding price. Information supplied by Seller relating to Seller's catalogue price, if any, and support thereof is expressly agreed not to be cost or pricing data. Proposed changes which would, in the opinion of Seller, Buyer, or any customer of Buyer, require Seller to furnish cost or pricing data or otherwise affect the terms of this document will be considered outside the scope of this contract, as will proposed changes requiring the disclosure of technical data or information considered proprietary by Seller, and will not be binding on Seller or have any force or effect whatsoever.
10. **TERMINATION:** (a) If this contract is for goods to be furnished to the U.S. Government, directly or indirectly, either under a contract with the U.S. Government or under a subcontract at any tier under such contract, in the event of termination of the prime contract with the U.S. Government which results in the termination of this contract for the convenience of Buyer or Buyer's customer, Seller shall be entitled (i) To the price of goods completed and shipped, but not yet paid for, at the contract price; and (ii) To the price of goods completed but not yet shipped or paid for, at the contract price; and (iii) To an allowance for work in progress equivalent to the percentage of the contract price equal to the percentage of effort completed on those goods by Seller, determined by good faith negotiation between the parties. Buyer will be entitled to receive any good for which it pays and Seller has the option not to claim compensation for work in progress which it is willing to absorb or redirect. (b) If this contract is not a U.S. Government contract or subcontract, Buyer shall have no right to terminate or cancel any order. In the event Buyer terminates or cancels any order, Seller shall be entitled to the full contract price less any proceeds realized by Seller, after payment of all expenses of sale, by selling the finished goods or raw materials purchased by Seller to fulfill the order.
11. **TECHNICAL DATA:** No right to technical data from Seller other than finished product inspection data is conveyed hereunder.
12. **PROPRIETARY AREAS, PROCESSES AND INFORMATION:** Seller's manufacturing areas, processes and information are proprietary, as are Seller's financial data and information. Seller reserves the right to limit inspections of its area, processes and information to areas, processes and information considered by Seller to be non-proprietary, and Seller shall not be obliged, regardless of anything to the contrary in any other document, to disclose, convey, or allow access to data or information considered by Seller to be proprietary or to indemnify Buyer for any consequences of any such failure or refusal in the absence of a specific written undertaking agreeing to such disclosure, conveyance, access or indemnity signed by an officer of Seller.
13. **DEFAULT:** If Buyer is in default under or breaches or repudiates this contract or any other outstanding contract or order with the Seller, then in addition to any other remedies Seller may have hereunder or by operation of law, Seller, without notice, (a) may suspend the shipments called for by this contract or any other contract or order until the default, breach or repudiation is removed, or (b) may cancel any undelivered portion of this or any other order in whole or part (Buyer remaining liable for damages), or (c) may declare forthwith due and payable all outstanding bills of Buyer under this and any other order, or (d) may irrespective of any terms or credit, sell, for the account of Buyer, all or part of any goods sold hereunder, whether in Buyer's possession or Seller's possession, for which payment in full has not been received, or (e) may exercise any and all other remedies available to Seller. The foregoing remedies are cumulative and not mutually exclusive. If Seller suspends shipment, as permitted by this clause, Buyer agrees to accept and pay for the delayed shipments even though deliveries are tendered after the specified time for delivery has passed.
14. **ARBITRATION:** Controversies between the parties arising under this contract, but expressly not including any dispute solely for payment for goods, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, in the State of California, USA. Such rules are, however, modified as necessary to be consistent with the intention of the parties that arbitration be a highly expeditious method of dispute resolution. In accordance with that intention, the parties further agree that the arbitration will commence not later than thirty (30) working days after the date either party notifies the other that the dispute is not resolvable and requests that it be submitted to arbitration. An arbitrator will be chosen by mutual agreement of the parties within twenty (20) working days of the date the dispute is declared by the aforesaid notice. If the parties cannot agree on an arbitrator, a panel of two to three arbitrators will be appointed, one to be chosen by Buyer and one or two (at Seller's election) to be chosen by Seller, such panel to be appointed within ten (10) working days after the expiration of the twenty (20) working-day period referred to above. The parties will have a maximum of twenty (20) working days after the commencement of the arbitration, such period to be divided evenly between them, to complete the presentation of their respective cases before the arbitrator. The arbitrator(s) will have a maximum of ten (10) working days after completion of the hearing to render a decision regarding the dispute. All time periods and deadlines set forth herein may be extended by the mutual agreement of the parties. If the dispute relates solely to the payment of goods, at Seller's sole option, the dispute may be governed by this arbitration procedure by delivery by Seller to Buyer of written notice that the dispute is not resolvable and the request that it be submitted to arbitration. The parties irrevocably consent to the jurisdiction of the courts of the State of California for all purposes in connection with arbitration or litigation pertaining to this contract. The parties agree that any process, notice or other application to either of said courts, and any paper in connection with arbitration, may be served inside or outside the State of California by certified mail or by personal service or in such other manner as may be permissible under the rules of the applicable court or arbitration tribunal.
16. **APPLICABLE LAW; LANGUAGE:** The terms and provisions of this contract shall be construed in accordance with the substantive law of the State of California not including its choice of law provisions. This contract is written in the English language, which shall prevail over any translations hereof.
17. **ENTIRE AGREEMENT:** Except as expressly provided herein or in any document executed by both parties, this document is intended by the parties to be the final written expression of all the terms included herein and is their complete and exclusive statement of their agreement on the subjects governed hereby. These terms may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement and may only be explained, supplemented, modified, altered, waived or superseded only by a writing signed by both parties.