

Terms and Conditions

EASTBAY I.T. CONSULTING INC.("EASTBAY")

TERMS AND CONDITIONS OF SALE OF GOODS AND SERVICES

1. Terms and Conditions of Sale

These terms and conditions ("Conditions") govern the sale of Goods and Services by EASTBAY to Customer, unless EASTBAY has signed a separate purchase agreement. Customer acknowledges and agrees that it shall purchase and take delivery of the Goods and accept any Services in accordance with these Conditions. If these Conditions are submitted in response to a purchase order or other written or oral offer of Customer to purchase the Goods or Services, to the extent that there are any material differences or additions in the terms contained in Customer's offer, this Sales order shall be considered a counter offer to sell the Goods or provide the Services to Customer under the terms and conditions herein contained. Customer's purchase and/or acceptance of the Goods and Services shall constitute its acceptance of these Conditions in its entirety, to the exclusion of any contrary or additional terms and conditions set forth in any statement, purchase order or other document or record of Customer and which shall be considered solely for the convenience of the Customer and which in no event shall alter, modify, supersede or supplement these Conditions. These Conditions supersede any preprinted terms on any of Customer's documents and which are expressly rejected by EASTBAY and any previous written or oral communications or representations by either party and may not be amended or modified without prior written consent of Eastbay.

2. Blanket Orders

Should this contract be a blanket order for the mutual convenience of the parties, Goods may be requisitioned by Customer for periods up to one (1) year from date of first shipment. Minimum release quantities should be specified, and if none, are subject to Eastbay's determination. All Goods not shipped within one (1) year from the date of first shipment will be filled and shipped at the discretion of EASTBAY and paid by Customer in accordance herewith unless other arrangements are agreed upon by the parties. In the event of early cancellation or termination EASTBAY may bill and ship at its discretion all Goods not yet shipped, to be paid by Customer in accordance herewith.

3. Quotes, Ordering, and Payment

a. Payment Terms; Orders; Quotes; Interest. Your order is subject to acceptance or cancellation by Eastbay, in Eastbay's sole discretion. Terms of payment are within Eastbay's sole discretion, and unless otherwise agreed to by Eastbay, payment must be received by Eastbay prior to Eastbay's acceptance of an order. Each accepted order will be interpreted as a single Agreement, independent of any other orders. Payment for Products, Software, and Services must be made by wire transfer, electronic funds transfer or some other prearranged payment method at the time of order unless credit terms have been agreed to by Eastbay. Credit card payments will not be accepted. Payment to Eastbay in respect of Products, Software and Services, as applicable, shall be made to the account indicated by Eastbay (as may be amended from time to time). Orders for Third-Party Products are subject to availability and are

cancellable by Eastbay. Orders for Third-Party Products are non-cancellable by Customer. If Customer purchases a multi-year Software license and related support and/or maintenance, and Eastbay and the Customer (and, if applicable, the third-party licensor of the software) agree to annualize the Customer's purchase over the term of the license, Customer shall make all annual payments in full and such purchase is non-cancellable over the term of the license. Timely payment of the price and all charges is of the essence. It is the responsibility of Customer to ensure payments are authorized and approved on time to ensure receipt of payment no later than the due date; in no case shall Eastbay be responsible for ensuring such authorization or approval. Any assignment by Customer of its purchase order to a thirdparty financing company must be approved in advance in writing by Eastbay, and in no case shall any such approval excuse Customer from its obligations hereunder. Eastbay reserves the right to charge you a late fee of 1.5% per month (18% per annum) applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. Late penalties will be recalculated every 30 days thereafter based on your current outstanding balance. In addition, Eastbay, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate any or all Services and refuse additional orders for Products or Software from Customer until Eastbay's receipt of all overdue amounts. Eastbay shall have no liability to Customer for any such suspension or termination of services or for its refusal of additional orders. Eastbay further reserves the right to seek collection of all overdue amounts (including by referral to third party collectors), plus all reasonable legal fees (including reasonable attorney's fees) and costs associated with such collection. Payment of the corresponding price and costs shall be made in the currency identified by Eastbay in its invoice. Additional charges will apply if Customer requests Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Service, such as customized invoicing, consolidated invoicing, and statements. Eastbay reserves the right to change the method of delivery of all documentation, and any additional changes requested by Customer may be subject to additional charges.

b. **Invoices.** Other than where up-front payment in full was required prior to acceptance by Eastbay of an order, Invoices will be due and payable in accordance with section 3a of this Agreement within the time period noted on your invoice, or if not noted, then within 30 days, measured from the date of the invoice, subject to continuing credit approval by Eastbay, such approval may be revoked without further notice from Eastbay. Eastbay may invoice parts of an order separately or may invoice purchases of the Products, Software and Services in one invoice to Customer. Eastbay is not responsible for pricing, typographical, or other errors in any offer, and reserves the right to cancel orders arising from such errors. Customer agrees that all invoices shall be deemed accurate unless Customer advises Eastbay in writing of a bona fide, material error within fourteen (14) days of the date of such invoice. In the event that Customer advises Eastbay of a material error, (i) payment of any amounts corrected or modified by Eastbay in writing shall be due within fourteen (14) days of such correction, and (ii) all other amounts shall be paid by Customer by the invoice due date. In the event Customer withholds payment of any invoiced amounts upon an assertion by Customer that such amounts are erroneous, and Eastbay subsequently concludes that such invoiced amounts are accurate, Customer shall pay interest on such amounts as described above from the due date for such amounts until Eastbay's receipt of those

amounts. In no case shall Customer be entitled to offset, defer or deduct any invoiced amounts that Eastbay determines are not erroneous following the notification process set forth above.

c. **Shipping Charges; Title; Risk of Loss.** Taxes, environmental disposal surcharges, and shipping and handling charges are not included in Product prices unless expressly indicated at the time of sale. Loss or damage that occurs during shipping by a carrier selected by you is your responsibility. Shipping and delivery dates are provided as estimates only. You must notify Eastbay within 21 days of the date of your invoice or acknowledgement if you believe any part of your order is missing, wrong, or damaged.

d. **Taxes** Unless you provide Eastbay with a valid and accurate tax-exemption certificate applicable to your Product purchase and ship-to location, you are responsible for sales tax and any other taxes or governmental fees associated with your order. Customer may qualify for tax exemptions from time to time in which case Eastbay requests that Customer provide it with a valid certificate of exemption or other appropriate documentary proof of exemption. The charges stated in the order or any invoice shall be inclusive of all duties, levies or any similar charges and shall exclude GST, PST, HST or other VAT or equivalent sales or use tax (each, a "VAT"). Unless otherwise specified in writing by Eastbay, Customer shall pay all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes). Eastbay shall provide Customer with a valid invoice in accordance with VAT requirements or other applicable law. In the event that Customer is required by law to make a withholding or deduction in respect of the price payable to Eastbay, Customer will make the relevant payments to Eastbay net of the required withholding or deduction. Customer will supply to Eastbay evidence (e.g. official withholding tax receipts), to the reasonable satisfaction of Eastbay, that Customer has accounted to the relevant authority for the sum withheld or deducted. If such evidence is not provided to Eastbay within 60 days of remittance to the applicable tax authority, Eastbay will impose a penalty payment on Customer, and Customer will be liable for such penalty, in the amount of the withholding imposed on that particular transaction.

e. **Prices.** The prices charged for Products, Software, and Services purchased under this Agreement shall be the amounts set forth on Eastbay's website or other quotation, or as provided by the applicable invoice or Service Agreements relating to such Products, Software or Services. Quoted prices will remain in effect only until the expiration date of the quote or Eastbay's acceptance of your order, and such prices are subject to shortages in materials or resources, increases in the cost of manufacturing, or other factors.

f. **Returns and Exchanges.** Before returning or exchanging a Product, you must contact us directly to obtain an authorization number to include with your return, assuming the product is acceptable to be returned based on our or our third party vendor return policies. You must return Products to us in their original or equivalent packaging, and you are responsible for risk of loss, as well as shipping and handling fees. Additional fees, including up to a 20% restocking fee, may apply. If you fail to follow the return or exchange instructions provided by Eastbay, Eastbay will not be responsible for any loss, damage, or modification of a Product, or processing of a Product for disposal or resale. Credit for partial returns may

be less than invoice or individual component prices due to bundled or promotional pricing associated with your original purchase.

4. Shipment; Package; Title; Risk of Loss

- a.** All shipping dates are approximate and EASTBAY does not guarantee the date of shipment. Time shall not be considered of the essence. EASTBAY shall not be liable for any delay in delivery or any other default due to occurrences or contingencies, including, but not limited to, fire, flood, embargo, strike, shut down, lockouts, failure to secure materials or labor from usual sources of supply, governmental restrictions, conditions considered "force majeure", delays occasioned by any subcontractors, misrouting, or any other circumstances beyond Eastbay's control which shall prevent EASTBAY from performing in the normal and usual course of its business. Any delays resulting from the foregoing shall automatically extend the time for performance by Eastbay.
- b.** In the event that any other method of shipment shall be specified, the price shall be adjusted to reflect any change in the price to the extent that the cost of shipment is or will be included therein.
- c.** The cost of normal packaging for the Goods for domestic shipment is included in the total price, the method of packaging being determined solely by Eastbay. If Customer shall specify any special packaging or handling or if the Goods are to be exported, the additional cost thereof shall be added to the total price, unless it is specifically stated herein that such costs were included in calculating the total price quoted.
- d.** Title and risk of loss shall pass to Customer as soon as the Goods have been delivered to the carrier for shipment to Customer. Passage of title and/or risk of loss shall not be affected by delivery terms, shipping instructions, or storage on Customer's behalf by EASTBAY at its facilities.
- e.** Partial deliveries may be made without notice and payment therefore shall be due in accordance with the terms hereof as such deliveries are made and invoices rendered.
- f.** If shipment is delayed at Customer's request, Goods shall be deemed stored at Customer's risk and expense. Customer shall be liable to EASTBAY for all costs and charges related to such storage and shall pay EASTBAY within ten (10) days of invoice thereof.

5. Inspection By Customer; Acceptance and Rejection

Customer acknowledges that prior to use it will fully inspect all Goods and Services. In the event that such inspection and testing reveals any damage, deficiency, or non-conformity, Customer shall notify EASTBAY within fifteen (15) days of the date of delivery. Customer's failure to make a timely claim or its use of the Goods shall constitute irrevocable acceptance and the waiver of any and all claims except warranty claims. Customer shall timely notify EASTBAY in writing of its rejection or revocation of acceptance of any of the Goods, specifying all claimed defects and non-conformities. No Goods shall be returned by Customer unless authorized in writing by Eastbay. EASTBAY may, at its option, repair or replace the defective or nonconforming Goods or refund the purchase price thereof.

6. Proprietary Rights

Any and all models, drawings, sketches, plans, and other information including, without limitation, technical, commercial and financial data supplied by one party to the other shall remain the property of the party who shall have supplied it. The other party may not use any such material or information except for the purposes for which it was provided and shall not disclose it to any third party without the express consent of the disclosing party. EASTBAY shall not be required to retain any such materials and items furnished by Customer beyond thirty (30) days after final invoice.

7. Limited Warranty

a. **EASTBAY warrants that (i) it will convey good title to the Goods, free from any security interest or other lien or encumbrance; (ii) the Goods will conform, within normal commercial standards, to any applicable or agreed upon specifications and, under normal use, and when proper service and maintenance are performed, shall be free from defects in materials and workmanship for a period of one (1) year from the date of delivery by EASTBAY to Customer and (iii) any Services provided by it shall be performed in a workmanlike and competent manner consistent with normally accepted industry standards. The sole and exclusive remedy of the Customer and obligation of EASTBAY under this Warranty is limited, at Eastbay's option, to the replacement or reworking of the defective Goods or Services or the return of that portion of the purchase price applicable to the defective Goods or Services as agreed to by Eastbay or its third party return/exchange policies.**

b. **Eastbay's warranty does not apply (i) to any damage to Goods resulting from misuse, negligence, improper installation, or accident; (ii) damage or deterioration due to normal use, wear and tear or exposure; (iii) normal maintenance services or replacement of service items; (iv) damage resulting from operation of the Goods contrary to instructions or specifications provided by Eastbay; (v) defects or failures resulting from Customer's specifications or designs or otherwise caused by Customer or the end-user; or (vi) any Goods repaired, altered or modified without prior written approval by Eastbay.**

c. **THE ABOVE WARRANTIES ARE GIVEN IN LIEU OF ANY OTHER REPRESENTATION OR WARRANTY WHETHER EXPRESS, IMPLIED, OR STATUTORY AND INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EASTBAY EXPRESSLY DISCLAIMS ALL WARRANTIES AND GUARANTEES NOT EXPRESSLY STATED HEREIN.**

8. Limitation of Liability

a. **Eastbay's liability for defective or nonconforming Goods or Services, whether based on breach of warranty, negligent manufacture or product liability, is exclusively limited to repair or replacement, at Eastbay's election, of such Goods or Services as more particularly provided for in its Limited Warranty. EASTBAY shall not be liable for any costs relating to disassembly, dismantling, removal, reinstallation and reassembly or other rectification costs.**

b. EASTBAY'S MAXIMUM AND CUMULATIVE LIABILITY FOR ANY AND ALL CLAIMS IN ANY WAY ARISING FROM OR PERTAINING TO THIS CONTRACT, INCLUDING THE PERFORMANCE OF EASTBAY'S OBLIGATIONS PURSUANT HERETO OR ANY GOODS SOLD OR REQUIRED TO BE SOLD, OR SERVICES NOT PERFORMED OR REQUIRED TO BE PERFORMED, SHALL IN NO EVENT EXCEED IN THE AGGREGATE THE PURCHASE PRICE OF THE GOODS OR SERVICES ON WHICH SUCH LIABILITY IS BASED. UNDER NO CIRCUMSTANCE SHALL EASTBAY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF BUSINESS OR PROFIT OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES HOWSOEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE AND IRRESPECTIVE OF WHETHER EASTBAY WAS ADVISED OR AWARE THAT SUCH DAMAGES WERE POSSIBLE.

c. Any claim for damages by Customer must be commenced within one (1) year of the event giving rise to such claim. Any claim not filled in accordance with the preceding sentence is null and void.

d. Nothing contained herein will be construed as an attempt to exclude or limit the liability of EASTBAY in negligence: (i) for the death of or injury to any person; or (ii) for any matter which it would be illegal for EASTBAY to exclude or attempt to exclude its liability.

9.. Indemnification

a. Customer shall indemnify and hold EASTBAY harmless from any and all loss, liability, claim, cause of action, cost, judgment, or damages, including reasonable attorney fees, for any personal injury, death, property damage, or economic loss of any sort, related to: any act or omission of the Customer, Customer's breach of these Conditions; use of the Goods by Customer or any third party receiving or using the Goods after Customer's receipt; or, any compliance by EASTBAY with Customer's plans, designs, or specifications including any patent infringement or alleged infringement; failure of Customer to comply with any applicable laws and regulations; all without regard to whether any loss is based upon breach of contract, breach of warranty, negligence, strict liability, or other tort or contract theory or cause of action.

b. EASTBAY shall indemnify and hold Customer harmless from damages and costs awarded by a final judgment in proceeding to the extent directly and solely attributable to a claim that the Goods directly infringed the intellectual property rights of a third party except where such infringement is due to plans, designs or specifications provided by Customer to EASTBAY and provided that Customer promptly notifies EASTBAY of any such claim and EASTBAY has the sole right to investigate, defend and settle any such claim.

10. Non-payment

If the purchase price is not paid when due, Customer shall pay interest at the maximum legal rate on all such sums from the date due until paid. In addition, EASTBAY shall have and may exercise all rights and remedies provided by law or equity including, without limitation, suspending work on and withholding delivery of Goods or performance of Services until payment in full is made. Customer shall also be liable

to EASTBAY for all costs of collection including reasonable attorney fees and costs incurred by EASTBAY upon the default by Customer.

11. Assurances of Performance

If, in the judgment of Eastbay, the financial condition of Customer at any time does not justify continuation of production or shipment on the terms of payment originally specified, EASTBAY may require full or partial payment in advance or additional security from Customer before shipment, accelerate the date of any payment, withhold any shipment or further shipments, cancel any unfilled orders and/or demand such other or further adequate assurance of performance from Customer. In the event of the bankruptcy or insolvency of Customer or in the event any proceeding is brought by or against Customer under the bankruptcy or insolvency laws, EASTBAY shall be entitled to cancel any order then outstanding, without liability whatsoever, and shall receive reimbursement for its cancellation charges. 12. Export Control

Customer confirms that it is not located in (or a national resident of) any country under Canadian or U.S. Economic embargo or sanction, not identified on any U.S. Department of Commerce Denied Persons List, Entity List of proliferation concern or Canadian equivalent, on the U.S. State Department Debarred Parties List or Treasury Department Designated Nationals exclusion list or any Canadian equivalent, and not directly or indirectly involved in the financing, commission or support of terrorist activities or in the development or production of nuclear, chemical, biological weapons or in missile technology programs as specified in the U.S. Export Administration Regulations (15 CRF 744) and hardware, software, technology, or services may not be exported, re-exported, transferred or downloaded to any such entity.

13. Governing Law and Jurisdiction

These Conditions shall be governed by and construed under the laws of the Province of Ontario, including the laws of Canada of general application therein, without regard to conflicts-of-laws principles that would require the application of any other law. The parties irrevocably and unconditionally agree that any action arising out of or relating to these Conditions or its subject matter shall be brought in the appropriate Ontario court in the City of Toronto and the parties irrevocably submit to the exclusive jurisdiction of such court and each party waives any objection to the laying of the venue of any such suit, action or proceeding in any such court and waives any right that it may have to assert the defense of forum non-convenience. The parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods, or any local legislation implementing such Convention, if otherwise applicable.

14. Additional Terms & Conditions

a. Language of the Agreement. The parties acknowledge that they have agreed that this Agreement be drawn up in English. Les parties reconnaissent avoir accepté la rédaction en anglais de la présente convention.

- b. Notices.** Any notice given pursuant hereto shall be deemed properly given if in writing and (i) delivered by hand (including commercial delivery service), (ii) sent by telecommunication (including facsimile and electronic mail), or (iii) sent by mail to an address previously provided by each party to the other. Notice served by hand or by telecommunication shall be deemed to have been given one (1) business day following the date on which such notice is serviced, provided, if notice is by telecommunication, sender has proof of receipt by the other Party. Notice served by mail shall be deemed to have been given five (5) business days following the date on which such notice is postmarked.
- c. Prime Contract(s) Not Applicable.** EASTBAY shall not be bound by any provision under any prime or other contract to which Customer is a party unless EASTBAY specifically acknowledges in writing. EASTBAY is not required to burden its suppliers with any of Customer's terms and conditions unless separately acknowledged by it in writing.
- d. Assignment.** Customer may not assign this contract, in whole or part, without the prior written consent of Eastbay, and any attempted assignment or delegation by Customer shall be void and ineffective for all purposes. EASTBAY reserves the right to transfer or assign, in whole or in part and without recourse by Customer against Eastbay, its rights, liabilities and obligations herein arising to a third party without prior written notice, and such assignment shall operate to release EASTBAY from its obligations hereunder. Such transfer or assignment shall not create a right in Customer to demand assurances from the assignee.
- e. Set-Off.** EASTBAY shall have the right to credit toward the payment of any monies that may become due to EASTBAY hereunder any sums which may now or hereafter be owed to Customer by EASTBAY or by any affiliate of Eastbay. Customer shall not be entitled to set off any amounts due Customer against any amount due EASTBAY or any of its affiliates.
- f. Waiver.** Waiver by EASTBAY of any breach of any of the Conditions set forth herein shall not be construed as a waiver of any other breach, and the failure of EASTBAY to exercise any right arising from any breach or default of Customer hereunder shall not be deemed to be a waiver of such right which may be exercised at any subsequent time.
- g. Severability.** In case any provision hereof shall be declared invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of the remaining provisions herein shall not in any way be affected or impaired.
- h. Survival of Certain Terms.** Any provisions contained herein which by their nature would continue beyond the expiration, cancellation or termination of this contract will survive such expiration, cancellation or termination.
- i. Entire Agreement.** Customer acknowledges that it has read this contract, understands it, and agrees to be bound by its terms, and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this

contract. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a writing signed by Eastbay.

Eastbay I.T. Consulting Inc. Attn: Contracts Manager
110 Spadina Ave., Suite 201, Toronto, ON M5V 2K4

Terms of Sale

END OF AGREEMENT