1. Applicability. Subject to the express terms of any other valid Terms you ("Buyer") have with Liqid Inc. ("Seller"). these terms and conditions of sale (these "Terms") govern the sale of any products, services or software ("Goods"). These Terms comprise the entire between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations, and warranties, and communications, both written and oral, including any preprinted terms and conditions on either party's standard purchase orders, invoices, quotes or the like. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

If the Goods includes software (whether built into hardware circuitry as firmware, provided as a standalone computer software product, provided as a hosted service, embedded in flash memory, or stored on magnetic or other media), such software is licensed, not sold, and Buyer is granted a non-exclusive, non-assignable right to use such software for no other purpose than that of operating the Goods furnished under these Terms. If accompanied by a separate end user license, terms of service or terms of use, use of any such software or service will be subject to such separate terms (including any differing limited warranty terms exclusions and limitations). Nothing herein shall be construed to grant any rights or license to use any software in any manner or for any purpose not expressly permitted by the license.

Basic Order Terms - Fixed: All purchase orders for the Goods shall include the following information: (i) products and quantities, (ii) prices, (iii) delivery instructions, and (iv) the applicable part number, (collectively, "Basic Order Terms"). All Basic Order Terms are fixed and final upon Seller's acceptance of the order. Seller's obligation to Buyer is limited to these Terms.

2. Title, Risk of Loss, Acceptance, Shipping Terms; Delivery; Installation:

(a) Seller will use reasonable commercial efforts to deliver the Goods within a reasonable time after placement of the Purchase Order. Seller shall not be liable for any delays due to issues and/or circumstances outside of Seller's reasonable control, or for any loss or damage in transit. Unless otherwise agreed in writing by the parties. Delivery terms for the Product shall be Ex works, Liqid's Broomfield, CO facilities (or such other US location that Liqid denotes at Liqid's sole discretion). Buyer will pay all costs relating to transportation, storage, delivery, duties/taxes and insurance. Buyer will provide Liqid with shipping instructions and associated freight account number(s) on the applicable Order and if it fails to do so, Liqid will determine the carrier and means of transportation and will ship the Product freight collect. In such instances, title and risk of loss or damage to the Product to be delivered shall be transferred from Liqid to Buyer upon shipment of Product from Liqid's Broomfield, Colorado facilities (excluding title to any microcode, firmware operating system software or other software, in which case only title to the media will pass) or such other US location that Liqid denotes at Liqid's sole discretion). Buyer will be solely responsible for filing claims relating to any lost goods or goods damaged in transit. Any lead times or shipment dates (requested and/or quoted) provided by Seller are estimates only and Seller shall in no event be liable for any loss, damage, costs or expenses of any kind for any failure to deliver in accordance with the given lead time or shipment date.

(b) Unless otherwise specified by Buyer in writing, all Goods shall be packed, packaged, marked, and otherwise prepared for shipment in a manner which is (i) in accordance with good commercial practice (ii) acceptable to common carriers for shipment at the lowest rate for the particular products and in accordance with all tariffs, governmental laws and regulations, and (iii) adequate to insure safe arrival of the Goods at the designated destination.

(c) The Goods will be deemed irrevocably accepted when Seller loads the Goods on the carrier's vehicle at Seller's designated point of shipment.

(d) As between Buyer and Seller, Buyer is responsible for installation of the Goods, except when additional on-site and/or remote services have been ordered from Seller.

(e) Intellectual Property Ownership: As between Seller and Buyer, Buyer agrees that Seller owns all right, title and interest to all intellectual property and other proprietary rights to the technology, software, designs, engineering details, schematics and similar data relating to or incorporated in the Goods and any accompanying documentation or information derived from the foregoing. Buyer shall take reasonable precautions to prevent unauthorized access and use of the software and documentation by third parties. To the extent permitted by relevant law, Buyer shall not, nor allow any third party to copy, decompile, disassemble, or otherwise reverse engineer the Goods, or attempt to do so. Buyer is prohibited from, and shall prevent any third party from, removing, covering or altering any of Seller's patent, copyright or trademark notices placed upon, embedded in or displayed by the Goods or their packaging and related materials. Seller reserves all rights not specifically granted to Buyer hereunder.

3. Price: Buyer shall purchase the Goods from Seller at the price (the "Price") set forth in Seller's invoice. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

4. Payment Terms: Upon successful credit approval, and unless otherwise agreed, Buyer shall pay all invoiced amounts due to Seller within 30 days of the date of Seller's invoice. Buyer shall make all payments hereunder by US dollars. All amounts payable are exclusive of any taxes, duties, or similar charges imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

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5. Limited Warranty; Disclaimers.

(a) Subject to the Warranty Period (defined below), Seller warrants to Buyer that from the date of shipment of the Goods, that such Goods materially conform to Seller’s published specifications in effect as of the date of manufacture and will be free from defects in material and workmanship for a period of (i) one year from the date of shipment for Composable Infrastructure Goods listed at https://www.liqid.com/products/composable-infrastructure, and (ii) one year from the date of shipment for Composable Storage Goods listed at https://www.liqid.com/products/composable-storage ("Warranty Period").

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 5(A), THE GOODS ARE PROVIDED “AS IS” WITH ALL FAULTS AND DEFECTS AND SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE GOODS, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. TO BUYER’S OWN JUDGMENT AND QUALIFICATION. DATA, AND/OR INFORMATION WILL BE UP-TO-DATE, SECURE, OR ERROR-FREE BASIS; (B) ANY CONTENT, SERVICES OBTAINED BY BUYER THROUGH THE GOODS, THAT SUCH GOODS MEET BUYER’S REQUIREMENTS OR WILL SATISFY BUYER’S BUSINESS REQUIREMENTS.

(e) The limited warranty in Section 5(a) does not apply in relation to problems that arise from: (i) any third-party items or services with which the Goods are used or other causes beyond Seller’ control; (ii) installation, operation, or use not in accordance with Seller’s instructions or applicable documentation (including but limited to the Sellers HCL listing fund at XXXXXX; (iii) use in an environment, in a manner, or for a purpose for which the Goods were not designed; (iv) any modification, alteration, or repair by anyone other than Seller or its authorized representatives; (v) causes attributable to normal wear and tear; (vi) use directly or indirectly in supporting activities prohibited by U.S. or other export regulations; (vii) use by parties appearing on the most current U.S. export exclusion list; (viii) relocation to countries subject to U.S. trade embargo or restrictions; or (iv) installation, operation or use of the Goods after expiry of the applicable warranty period. Seller has no obligation for Goods purchased from any entity other than Seller or a Seller authorized channel partner. Seller has no obligation for Goods used outside the permitted territory without Seller’s consent.

(f) With respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods. In the case of replacement, Seller may replace defective Goods with one that was previously used, repaired and tested to meet Seller’s specifications. The replacement Goods will be in the same or better condition than the Goods that were replaced. The warranty period for repaired or replaced Goods will be the longer of the remainder of the original warranty period or 90 days. If Buyer receives a replacement but does not return the defective item to Seller, then Buyer must pay Seller for that item.

(g) THE REMEDIES SET FORTH IN SECTION 5(F) SHALL BE THE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 5(A).


(a) IN NO EVENT SHALL SELLER, ITS SUPPLIERS, THIRD PARTY PROVIDERS, BUSINESS PARTNERS, LICENSORS, AND/OR AFFILIATES AND EACH OF SELLER’S AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, SUCCESSORS, AND ASSIGNS BE LIABLE TO THE BUYER FOR ANY DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS TERMS, THE BUYER’S ACCESS OR USE, OR INABILITY TO ACCESS OR USE, THE GOODS, ANY SOFTWARE RELATED TO THE GOODS, ANY CONTENT OR ANY PRODUCTS OR SERVICES OR ITEMS RELATED TO THE GOODS, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REVENUE OR PROFIT, LOSS OF DATA, BUSINESS INTERRUPTION, DIMINUTION IN VALUE, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF ANTICIPATED SAVINGS, LOST REPUTATION, OR FOR ANY DIRECT, CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, ENHANCED OR PUNITIVE DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) UNDER ANY THEORY OF LIABILITY, WHETHER ARISING OUT OF OR BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT

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LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR OTHERWISE RELATING TO THE GOODS OR THE USE OR INABILITY TO USE ANY OF THE GOODS, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. BUYER IS SOLELY RESPONSIBLE FOR BUYER'S DATA AND INFORMATION AND BEARS ALL RISK OF DATA LOSS AS A RESULT OF BUYER'S USE OF THE GOODS.

(b) ALL GOODS ARE MANUFACTURED SOLELY FOR STANDARD COMMERCIAL APPLICATIONS, ARE NOT FAULT-TOLERANT, AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY CRITICAL SAFETY SYSTEM, LIFE-SUPPORT SYSTEM, MEDICAL DEVICE, NUCLEAR FACILITY, MILITARY DEVICE, SATELLITE, AVIATION EQUIPMENT OR OTHER HIGH-RISK APPLICATIONS, INCLUDING WITHOUT LIMITATION ANY APPLICATIONS IN WHICH THE FAILURE OF THE GOODS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR PHYSICAL OR PROPERTY DAMAGE ("HIGH-RISK APPLICATIONS"). SELLER DISCLAIMS ANY AND ALL LIABILITY IN CONNECTION WITH USE OF THE GOODS FOR ANY HIGH-RISK APPLICATIONS. BUYER WARRANTS THAT IT WILL NOT USE, OR KNOWINGLY PERMIT ANY OF ITS DIRECT OR INDIRECT CUSTOMERS TO USE ANY GOODS IN ANY HIGH-RISK APPLICATIONS. BUYER AGREES TO INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS AGAINST ANY LOSS, LIABILITY, OR DAMAGE OF ANY KIND THAT SELLER INCURS IN CONNECTION WITH A BREACH OF THIS WARRANTY.

(c) OTHER THAN AS EXPRESSLY PROVIDED IN THIS TERMS AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATION RELATED TO A TERMINATION OR EXPIRATION OF THIS TERMS IN ACCORDANCE WITH THE TERMS OF THIS TERMS. THE PARTIES ACKNOWLEDGE THAT THIS SECTION HAS BEEN INCLUDED AS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS TERMS AND THAT NEITHER PARTY WOULD NOT HAVE ENTERED INTO THIS TERMS BUT FOR THE LIMITATIONS OF LIABILITY AS SET FORTH HEREIN.

(d) Seller’s suppliers have no liability of any kind under this Terms. Seller shall have no liability for any microcode, firmware and/or operating system software provided for the Goods or software that may be preinstalled on the Goods.

7. Restrictions on Use.
(a) Buyer must not use the Goods:
   i. in any way prohibited by law, regulation, or governmental order or decree;
   ii. to violate any rights of others;
   iii. to try to gain unauthorized access to, test the vulnerability of, or disrupt the Goods or any other service, device, data, account, or network;
   iv. to distribute spam or malware;
   v. in a way that could harm the Goods or impair anyone else’s use of it;
   vi. in any way intended to work around the Goods’ technical limitations;
   vii. with any unsupported hardware or software;

(b) From time to time Seller may request Buyer to provide information to confirm Buyer’s compliance with these terms. Buyer must comply with any requests from Seller for such information within a reasonable time, but in any event within ten (10) business days of receipt of the request.

(c) Buyer shall not reverse engineer, de-compile, disassemble, or otherwise derive source code from the Goods, nor will Buyer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of Goods or encourage others to do so.

8. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Terms with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Terms and such failure continues for fifteen days after Buyer’s receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. The Buyer may only terminate this Terms upon a material breach by Seller, prompt notice of such material breach and such material breach continues un-remedied for a period of thirty days. For the avoidance of doubt, Buyer acknowledges that all Purchase Orders made are firm orders and such Purchase Orders may not be canceled or modified without the prior written approval of Seller. Neither party will incur any liability for exercising any of its rights to terminate this Terms in accordance with its terms.

9. Confidential Information. Each party shall keep all non-public information or material provided by the party providing such non-public information or material ("Discloser") to the party receiving such non-public information or material ("Recipient") that is in tangible form and labelled “confidential” or the like, or, information which a reasonable person knew or should have known to be confidential ("Confidential Information") that it receives in connection with this Terms confidential using the same protections that it applies to its own information of like importance, but in no event less than reasonable care, and may use such information solely for the purposes contemplated by this Terms or as otherwise agreed. Confidential Information may be disclosed solely to employees, contractors and consultants who have a legitimate need to know such information and are bound to the Recipient under confidentiality restrictions substantially equivalent to this Section. Recipient’s obligations under Section with respect to Discloser’s Confidential Information will not apply to information that: (a) was rightfully in possession of the Recipient without any obligation of confidentiality prior to receipt of such Confidential Information from the Discloser, (b) is or becomes a matter of public knowledge through no fault of the party receiving such Confidential Information hereunder, (c) is rightfully received from a third party without a duty of confidentiality, (d) is independently developed by the Recipient without breach of any confidentiality obligations or (e) is disclosed by Recipient with Discloser’s written approval. In addition, Recipient will be allowed to disclose (i) Discloser’s Confidential Information to the extent that such disclosure is required by law or by the order of a court or similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser’s request and expense, in any lawful action to contest or limit the scope of such required disclosure, (ii) the terms and conditions of this Terms in confidence in connection with an actual or proposed merger, acquisition, or similar transaction. The parties acknowledge that breach of this Section will cause irreparable damage to the disclosing party for which monetary damages will be an inadequate remedy.

10. Export Control and Government Regulations. Buyer acknowledges that the Goods are subject to the U.S. Export Administration Regulations, as well as any other U.S. economic sanctions laws and regulations, and may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Buyer represent that (1) Buyer is not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export
transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List, Entity List or any other list of parties subject to sanctions under any U.S. economic sanctions laws or regulations; and (2) Buyer will not permit the Goods to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons.

11. General. A party shall not be liable or responsible to the other party, nor be deemed to have defaulted or breached this Terms, for any failure or delay in fulfilling or performing any term of this Terms (other than Buyer's payment obligations) when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of such party including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, supply chain interruptions, industrial disturbances, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage (“Force Majeure”). Buyer may not assign any of its rights or delegate any of its obligations under this Terms without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves a party of any of its obligations under this Terms. The relationship between the parties is that of independent contractors. Nothing contained in this Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. This Terms is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms. All matters arising out of or relating to this Terms is governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Colorado. The U.N. Convention on Contracts for the International Sale of Goods does not apply. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Terms, a Notice is effective only (i) upon receipt of the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section. If any term or provision of this Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Terms. No waiver by a party of any of the provisions of this Terms is effective unless explicitly set forth in writing and signed by such party. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Each party shall comply with all applicable laws, regulations and ordinances. Each party shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Terms. The Goods and all related documentation are “commercial items” pursuant to FAR Part 12 and DFARS Part 212, as applicable. Any use of the Goods and all related documentation by or for the U.S. Government shall be governed solely by this Terms.

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