

## **CONTINUUM TERMS AND CONDITIONS OF SALE**

1. Sale of Products. (a) All shipments, services, sales and quotations between Continuum (“Seller” or “Continuum”) and the purchaser (“Purchaser”) of Continuum’s products, and any related services set forth herein (“Products”) shall be subject to these Terms and Conditions of Sale (the “Terms”). Unless expressly rejected or otherwise modified in an agreed writing between the parties, these Terms shall be deemed incorporated into each agreement (“Contract”) between Continuum and Purchaser. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN ANY RESPONSE HERETO BY PURCHASER OR IN PURCHASER’S INITIAL ORDER ARE HEREBY REJECTED BY Continuum WITHOUT NEED OF FURTHER NOTICE OF REJECTION AND SHALL BE OF NO EFFECT NOR IN ANY CIRCUMSTANCES BINDING ON Continuum.

If Continuum does accept terms or conditions that differ from these Terms, such other terms and conditions shall apply only to the transaction at issue unless otherwise set forth by the parties. (b) Each order of Products shall be in writing and no order of Purchaser shall be binding on Continuum until the earlier of (i) shipment to Purchaser of Products or (ii) transmittal of a written acceptance by Continuum. Continuum’s failure to respond to Purchaser’s order within four (4) weeks after receipt of the order shall be a rejection of the order. (c) Continuum may cancel all accepted orders and deliveries of Products if Purchaser (i) makes an assignment for the benefit of creditors; (ii) becomes party to a voluntary or involuntary proceeding of insolvency, bankruptcy or reorganization; (iii) generally becomes unable to pay its debts as they become due; (iv) fails to remit payment to Continuum in accordance with the terms hereof or under any other agreement between Continuum and Purchaser; or (v) breaches any other material term, provision, or condition contained in these Terms. (d) All references in sales brochures, technical data sheets, and offers as to specifications, price and other details of the Products are approximate and shall not be binding on Continuum unless expressly agreed to in writing. Continuum may, from time to time, update and replace Products in its line. Continuum reserves the right to substitute updated Products, provided that such updated Products meet the specifications of the Products ordered by Purchaser in all material respects and are sold at the same price or less as the ordered Products.

2. Delivery and Title. (a) All prices quoted by Continuum shall be deemed to be agreed upon for shipments to be delivered CIP (carriage & insurance paid to) “named place of destination” to Purchaser’s premises by Continuum in accordance with “Incoterms 2010.” (b) Assembly, installation, shipping, packing, export clearance (to the extent applicable), and insurance will ordinarily be included on the invoice as separate line items relating to each Product. (c) If Purchaser fails to accept delivery of the Product, Continuum shall have the right to store the Product at the Purchaser’s cost and expense until such time as Continuum can sell the Product to a third party for a reasonable price. (d) Purchaser shall reimburse Continuum for the cost of recovery and recycling of packaging of Products that Purchaser does not choose to dispose of itself. (e) All dates of delivery set forth in an accepted order are approximate and non-binding on Continuum, unless the date has been expressly confirmed as “binding” by Continuum and all Page 2 prerequisites for delivery that are Purchaser’s responsibility in accordance with the Terms are met and confirmed by Purchaser, upon request. (f) If Purchaser requests any modification of the order after Continuum’s acceptance, Continuum shall have the right to extend the delivery date as reasonably needed to complete Purchaser’s changed order and to adjust the terms of sale and purchase price in Continuum’s sole discretion. (g) Continuum reserves the right to make partial shipments. Delay in

delivery of any installment shall not relieve Purchaser of its obligation to accept the remaining delivery.

(h) Notwithstanding the “CIP” Incoterm, title for Products shall pass from Continuum to Purchaser upon payment of the invoice price for the covered products. Purchaser shall advise Continuum without delay of any liens that may attach to the Products as well as any damage suffered by the Products. (i) Continuum shall not be liable to Purchaser for failure to deliver to Purchaser any or all of the Products if such failure to deliver is caused by the incorrect and/or unforeseen delayed supply to Continuum of such Products (or any components thereof) by its suppliers.

3. Acceptance. Purchaser shall inspect all Products immediately following arrival thereof at the destination, and shall give written notice to Continuum within five (5) days of any claim that the Products are nonconforming or defective, provided that a reasonable inspection should have revealed such non-conformity or defect. Absent such notice, Products will be deemed accepted.

4. Terms of Payment & Prices. Unless otherwise agreed to in writing, all prices quoted by Continuum are in U.S. Dollars and are inclusive of packing, handling, freight, and insurance. For customers located outside the U.S., all prices quoted by Continuum are exclusive of excise taxes, customs duties, and VAT. Payment terms for complete-system sales shall be as follows: (i) thirty (30) percent of the total purchase price shall be payable immediately upon Purchaser’s receipt of invoice, with Continuum’s order acknowledgement; (ii) sixty (60) percent of the total purchase price shall be payable by Purchaser, fourteen (14) days prior to system shipment; and (iii) the balance of the total purchase price shall be due net thirty (30) days after Continuum’s delivery of the system at Purchaser’s facility. Payment terms for all other purchases shall be thirty (30) days net unless otherwise specified in an applicable invoice. All invoices shall be paid by Purchaser upon receipt without any deduction. If an invoice is not paid in full within thirty (30) days following the date of invoice, the invoice shall be deemed to be in default whether or not Continuum has reminded the Purchaser of its payment obligation. Continuum shall be entitled to charge interest on the delinquent invoice in the amount of (i) 18% per annum or (ii) the highest rate permitted by applicable law. The foregoing shall be in addition to and not in lieu of any other remedies Continuum may have at law or in equity for such delinquency.

5. Responsibilities of Purchaser. (a) It shall be Purchaser’s responsibility to comply with any technical guidelines, such as assembly and/or installation requirements, which Continuum may issue from time to time, and to provide Continuum with all information and assistance which Continuum may reasonably require from Purchaser for installation. (b) Any specified training that may be included with the purchase of the Products must be initiated by the Customer for completion within two (2) years from acceptance of the Products. Continuum shall not be obligated to provide any such training thereafter, nor liable for any pro rata refund or other compensation.

6. Limited Warranties. (a) Continuum warrants only that for a period of twelve (12) months after the date of delivery (the “Warranty Period”) it will address any claims regarding material defects in the Products rendering Products non-conforming, provided Page 3 that Purchaser: (i) discovers any such defects within the Warranty Period; (ii) notifies Continuum of such defects in writing within fourteen (14) days of such discovery; and (iii) returns or makes the defective Product available to Continuum. If such conditions are met, Continuum shall, at its sole option, repair or replace the defective Product or issue a refund for the purchase price thereof. (b) Continuum further represents and warrants that, at the time of the Contract, it

is not aware that the sale or use of the Products will infringe any United States intellectual property rights of a third party, except that this representation and warranty shall not extend to any: (i) use inconsistent with Continuum's manuals and technical guidelines; (ii) any specific Product parameter settings; (iii) use of the Products in combination with non-Continuum designs, processes, features, or adaptations; or (iv) situations where the alleged infringement results from work product (e.g., items or objects) made using the Products. Purchaser must give Continuum prompt notice of any alleged infringement. (c) Continuum may elect (in its sole discretion) as to non-conforming Products, or allegedly infringing Products, to substitute comparable non-infringing or conforming Products, modify the Products to make them conforming or noninfringing, or obtain for Purchaser, at Continuum's expense, a license to continue using the Products, or accept return and reimbursement. (d) The limited warranties provided by these Terms shall not apply to, and Continuum shall have no obligations with respect to: (i) Products that have been altered or repaired by anyone other than Continuum's approved personnel; (ii) Products that have been damaged by circumstances beyond the reasonable control of Continuum; (iii) Products that Purchaser has incorrectly installed or improperly used or maintained; (iv) Products that have been subjected to conditions of use and or maintenance not in conformity with Continuum's instructions regarding the Products; or (v) Products used in connection with any hardware, software or consumables not approved by Continuum for such purpose. (e) THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

7. Indemnification. Purchaser shall defend, hold harmless, and indemnify Continuum, and its parents, subsidiaries, and affiliates, and the directors, members, officers, managers, attorneys, employees, and agents of each from and against all claims asserted by third parties, including governments, for damages or other relief arising out of these Terms or an underlying transaction relating to, or alleging: (i) the breach of any obligation for which Purchaser is responsible; (ii) any negligence, gross negligence, or willful misconduct of Purchaser or its personnel; (iii) any act or omission by Purchaser that results in personal injury, death, or damage to property; or (iv) infringement of intellectual property rights of third parties caused by Purchaser (but exclusive of Continuum's limited intellectual property warranty), including, without limitation, infringement arising from Purchaser's making certain work product using the Products.

8. Limitation of Liability. (a) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN ALL EVENTS, THE LIABILITY OF Continuum HEREUNDER, WHETHER BASED IN TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT IN QUESTION. (b) Continuum SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF ANY CONTRACT OR OF THIS CONTRACT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) Page 4 FOR INTERRUPTION OF USE, FOR LOSS OR INACCURACY OR CORRUPTION OF DATA, OR COST OF PROCUREMENT BY CUSTOMER OF SUBSTITUTE PRODUCTS, SERVICES, OR TECHNOLOGY; (B) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FROM LOST CONTRACTS OR BUSINESS; OR (C) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. (c) Purchaser acknowledges and agrees that Continuum has set its prices and entered into this Agreement in reliance

upon the disclaimers of warranty and limitations of liability set forth in these Terms, and that the same reflect an allocation of risk between the parties.

9. Security Interest. Purchaser hereby grants Continuum a security interest in the Products and all proceeds thereof to secure Purchaser's obligations to Continuum. Continuum shall be entitled to exercise all rights and remedies available to a secured creditor under applicable law. At Continuum's request, Purchaser agrees to execute and deliver to Continuum any and all documents necessary to perfect Continuum's security interest, including all UCC financing statements. Purchaser further appoints Continuum as Purchaser's attorney in fact for the purpose of executing all documents on Purchaser's behalf, which are necessary to perfect and maintain Continuum's security interest in the Products.

10. Protection of Trade Secrets and Confidential Information. (a) Continuum reserves all proprietary rights to specifications, drawings, models, samples, designs, technical information or data, written, oral or otherwise, furnished by or on behalf of Continuum which are not subject to transfer with Products. Designated confidential information shall be treated as confidential, and shall not be used, disclosed or reproduced by Purchaser, except as required in the course of performance hereunder. In the absence of a specific written non-disclosure agreement already existing between the parties, Purchaser's obligations of confidentiality hereunder with respect to each item of confidential information shall extend for a period of three (3) years from the date of Continuum's acceptance of the last order to which the items of confidential information in question pertain; provided, however, that Purchaser's obligations of confidentiality hereunder with respect to any such items of information which rise to the level of a trade secret (as defined under applicable law) shall remain in full force and effect for so long as such information remains a trade secret under applicable law. For purposes hereof, the confidentiality obligations embodied herein do not extend to any information, which, at the time of disclosure, was (i) already known or independently developed by Purchaser; (ii) in the public domain through no wrongful act of Purchaser; or (iii) received by Purchaser from a third party who was free to disclose such information. (b) The parties acknowledge that the rights of Continuum hereunder are in addition to those rights Continuum may have under common law or applicable statutes for the protection of trade secrets. Upon demand by Continuum, Purchaser shall immediately return to Continuum or destroy all confidential information subject to this Section and shall certify to Continuum compliance with this Section.

11. Intellectual Property Rights & Software License. (a) No rights under any of Continuum's intellectual property rights, including, but not limited to patents, copyrights, trademarks, and service marks, are extended to Purchaser unless specifically set forth in writing by Continuum, provided, however that Continuum grants Purchaser a limited, fully paid up, non-exclusive, inalienable and non-transferable license to use Continuum's intellectual property only to the extent necessary to operate the Products. (b) Continuum further grants to Purchaser a nonexclusive, limited license to use, in object code form, the software embedded into the Products (the "Software"). The source code of the Software will not be provided to Purchaser. Page 5 (c) Purchaser shall not use, copy, modify, adapt, translate, or create derivative works based upon the Software, nor disassemble, decompile, decrypt, reverse engineer the Software or in any way attempt to discover or reproduce source code for the Software, nor sell or transfer the Software or make it available to any third party, except in association with the sale or transfer of Products fully paid for by Purchaser that include the Software, but not separate from any Products.

12. Arbitration. Any controversy or claim arising out of or relating to these Terms or the breach hereof, shall be submitted to and be finally resolved by binding arbitration, pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, et seq., to be conducted in English by Judicial Arbitration and Mediation Services, Inc. (“JAMS”), with such arbitration to be held in California, in accordance with JAMS’s Comprehensive Arbitration Rules and Procedures then in effect. The arbitration shall be conducted by one arbitrator, as selected by the procedure established by JAMS rules. Any award or decision rendered in such arbitration shall be final and binding on both parties, and judgment may be entered thereon in any court of competent jurisdiction if necessary. Except as may be provided to the contrary herein, each party shall pay its own expenses incurred in connection with such arbitration proceeding, unless the arbitrator finds that a party engaged in bad faith or fraud, in which case the arbitrator may award attorney’s fees and costs to the other party. Notwithstanding the foregoing, either party may seek injunctive relief against the other party from any court of proper jurisdiction with respect to any and all preliminary injunctive or restraining procedures pertaining to this purchase order/contract or the breach thereof.

13. Export Compliance. Should Purchaser re-sell any Product or replacement part or upgrade for any Product (including related technical information) to any customer located outside of the U.S., Purchaser is responsible for obtaining any needed export license and for otherwise complying with any applicable U.S. or other law and regulation.

14. Support or Service Contracts. Support or service contracts between the Purchaser of the Product and Continuum shall be subject to a separate Service Agreement as may be entered into between the parties.

15. Limitation Period. Any warranty claims and claims for damages based on actual or alleged defects of the Products shall be subject to the applicable statutory limitation period or to a limitation period of one year after the cause of action accrued, whichever is shorter.

16. Subcontractors. Continuum may make use of subcontractors to perform any of its obligations under the Contract, provided that the use of any such subcontractors shall not limit or restrict Continuum’s obligations to Purchaser.

17. Miscellaneous. (a) Notwithstanding anything to the contrary, Continuum shall not be liable for any delay or failure to perform hereunder when such failure or delay is, directly or indirectly, caused by, or in any manner arises from fire, floods, accidents, civil unrest, “acts of God,” war, terrorism, governmental interference, embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, breakage of machinery or apparatus, transportation delays, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) beyond Continuum’s control. (b) Purchaser shall not assign this contract except to a party who agrees in writing to accept all of these Terms and Conditions as well as any other obligations associated with the underlying transaction, and Continuum consents to the assignment in its sole discretion, but which consent will not be unreasonably withheld. Page 6 (c) No modification, limitation, waiver or discharge of these Terms shall bind Continuum unless in writing and signed by a duly authorized employee of Continuum. (d) The failure of Continuum to insist, in one or more instances, on performance by Purchaser in strict compliance with the terms and conditions hereof shall not be deemed a waiver or relinquishment of any right granted hereunder with respect to any succeeding breach of the same or other provision hereof. Each Party shall deliver all notices required hereunder by personal delivery, nationally recognized overnight courier (with all fees prepaid), e-mail or

certified or registered mail, all of which shall be effective upon receipt. (e) These Terms shall be governed by, and construed, interpreted and enforced under the laws of the State of California without giving effect to conflict of laws principles, provided, however, that all aspects relating to arbitration hereunder shall be governed by the federal laws of the United States of America. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. (f) In case any condition, obligation, covenant or other aspect of these Terms should be or become unenforceable under applicable law, the remaining aspects shall not be affected thereby.

18. Execution in Counterparts. When referenced as an attachment to or as incorporated in a binding order or other contract, these Terms need not be separately executed to become binding. In the event of any agreed upon modification, however, these Terms may be acknowledged and executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement.