Terms and Conditions

GENERAL PROVISIONS FOR ACCEPTANCE OF FIRM FIXED-PRICE PURCHASE ORDERS FOR COMMERCIAL SERVICES ACCEPTED IN SUPPORT OF U. S. GOVERNMENT CONTRACTS

Mil-Pac Technology Corporation ("Mil-Pac") provides off-the-shelf software ("Software") and an internet-based service ("Service") for electronic data exchange with the US Government.

1. Acceptance of Terms – The Buyer shall accept these terms and conditions ("Agreement") by placing an order or by installing or using items provided by Mil-Pac. Mil-Pac hereby objects to and rejects any terms, conditions, or specifications contained in a Buyer's purchase order (or any other form or paper submitted by Buyer) which differ from or add to the terms and conditions of this Agreement. Buyer agrees that the terms, conditions, and specifications of the Agreement shall prevail over any inconsistent provisions in any form or other paper submitted by Buyer.

Buyer agrees that the terms and conditions stated herein shall prevail over any inconsistent provisions in a Purchase Order submitted by Buyer that have not been specifically accepted in writing by a MIL-PAC officer.

MIL-PAC may revise these Terms and Conditions at any time without giving notice. The revised Terms and Conditions and Software License Agreement will be effective at time of purchase, download or renewal. You can review the most current Terms and Conditions at https://milpac.com/terms and the current Software License Agreement at https://milpac.com/license.

2. Limited Warranty. For a period of thirty (30) days ("Warranty Period") from date of purchase, Mil-Pac warrants to Buyer, that (i) the Software will substantially conform to its documentation, including descriptions of the product published on milpac.com at the time of purchase, and, (ii) during the Warranty Period, the Software will operate substantially in accordance with the documentation. If during the Warranty Period the Software does not perform as warranted, Buyer may request either an updated version that corrects the nonconformity, or a refund of the license fees paid under this Agreement subject to Mil-Pac acceptance of a Return Merchandise Authorization (RMA), which will not be unreasonably denied, in which the Buyer successfully identifies the claimed nonconformity. The complete Return Policy, including the current RMA, both subject to change without notice, may be viewed at milpac.com/policies/return-policy.

Disclaimer. THE LIMITED WARRANTY SET FORTH ABOVE IS THE ONLY WARRANTY PROVIDED BY MIL-PAC. MIL-PAC DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. Limits of Liability. Because computer software is inherently complex and may contain errors, Buyer is solely responsible for verifying all results produced through use of the Software and for maintaining appropriate backup copies of all data and work products. Mil-Pac shall have no liability for any loss or damage arising from Licensee's failure to perform such verification or backups. Mil-

Pac 's cumulative liability to Buyer or any party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall not exceed the license fee actually paid by Licensee to Mil-Pac for the applicable Software.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MIL-PAC BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, ECONOMIC, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR ANY MIL-PAC PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, DAMAGES OR COSTS RELATING TO THE LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, OR COMPUTER PROGRAMS, EVEN IF MIL-PAC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO BUYER.

4. Independent Contractor.   It is the intention of Buyer and Mil-Pac that for all purposes Mil-Pac is and shall be an independent contractor and the sole employer and/or principal of any and all persons assigned by Mil-Pac to provide services related to this Purchase Order. Mil-Pac is obligated to perform all requirements of an employer under federal, state, and local laws and ordinances (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance. Mil-Pac, not Buyer, is the "common law employer" within the meaning of Treas. Reg. § 31.3401(c)-1(c)) of employees of all persons assigned by Mil-Pac to provide services under this Order. Under no circumstances shall Mil-Pac or its employees or agents be construed to be employees, representatives, or agents of Buyer for any purpose, including but not limited to record keeping obligations under state or federal OSHA and Worker's Compensation Laws. Mil-Pac's employees and agents shall not be entitled to participate in the profit sharing, pension, or other plans established for the benefit of Buyer's employees. If required by federal or state law, Mil-Pac agrees to comply with the Family and Medical Leave Act ("FMLA") for its employees and agrees that with regard to such employees, it is the primary employer as defined by the FMLA regulations.

5. Insurance – Unless otherwise agreed to as a Special Provision the Buyer accepts that the Seller maintains Commercial General Liability ("CGL") insurance, employer's liability insurance, and workers' compensation insurance as prescribed by the laws of the states in which Mil-Pac maintains offices, and other such coverage consistent with its business practice.   Buyer acknowledges financial responsibility for any costs incurred for additional coverage requirements accepted by a Special Provision signed by an officer of Mil-Pac.

6. Flow Down of FAR/DFARS.   The Buyer acknowledges that Mil-Pac Software and its work products will not be incorporated in nor components of the products of the Buyer and furthermore that use of the Service merely facilitates delivery of those products, therefore the flow down of FAR and DFARS clauses may not be applicable due to the nature of this acquisition or by their express terms and therefore shall be of no force or effect.   Buyer further acknowledges that the Software and Service are not physical materials that would require physical inspection, regulation or record keeping, nor systems or processes thereof.

7. CMMC Requirements. Pursuant to DFARS Rule 2019-D041, the "CMMC level to be required for subcontractors is the level that is appropriate for the information that is being flowed down to the subcontractor" and given that it is neither necessary nor appropriate to use Covered Unclassified Information (CUI) with any Mil-Pac Software nor upload CUI with the Service, the Buyer acknowledges that no requirement to operate with a Cybersecurity Maturity Model Certification (CMMC) exists for Mil-Pac.

8. Acceptable Use. The Buyer acknowledges that effective use of the Software or Service for its intended purpose of facilitating the marking and shipment of products within the Defense Supply Chain does not require the handling of Classified, Covered Unclassified Information (CUI), nor Federal Contract Information (FCI) as defined by DFARS 252.204-7012 and FAR 52.204-21. Mil-Pac makes no representations of compliance with the Cybersecurity Maturity Model Certification (CMMC) framework, nor shall Buyer have any expectation of certification of such compliance. Buyer shall not use the Software and related systems to process, store or upload to any cloud service any Classified, CUI, FCI nor Buyer Technical Data and accepts full responsibility for the handling and protection of such data.

9. Software License.

BY INSTALLING AND/OR USING THE SOFTWARE OR SERVICE, BUYER ACCEPTS AND AGREES TO THE TERMS OF THIS AGREEMENT, AND ARE THEREBY CREATING A CONTRACTUAL AGREEMENT BETWEEN BUYER AND MIL-PAC.

Each Software item licensed entitles Buyer with a perpetual, non-exclusive, nontransferable use of one (1) copy of the Software on a single, uniquely identifiable device.   Mil-Pac shall provide Technical Support at no charge for a period of one year after purchase.   Subsequent access to Technical Support requires a current Software Maintenance Agreement and may otherwise be denied at the sole discretion of Mil-Pac.

Buyer agrees to allow Mil-Pac to use embedded tools to collect names and email addresses of registered users, and device names on which the Software is operated for the purpose of verifying compliance with the licensing limitations set forth herein.

Buyer acknowledges that acceptance of additional terms as defined by the Software License Agreement (SLA) is a condition of installation of the Software or use the Service and that the SLA was available for review at https://milpac.com/license prior to purchase.

10. Intellectual Property Rights. The Software consists of proprietary products of Mil-Pac and the proprietary rights that protect such property may include, but are not limited to, U.S. and international copyrights, trademarks, patents, and trade secret laws of general applicability. All right, title and interest in and to the Software are and shall remain with Mil-Pac, as applicable. This Agreement does not convey to Buyer any interest in or title to the Software, but only a limited right of use, revocable in accordance with its terms.   Modification of the software at the request of Buyer does grant Intellectual Property Rights in Software to Buyer, even if those modifications are paid for by the Buyer.

11. Intellectual Property Indemnification.   Mil-Pac warranties that the Software and Service are free any infringement of any United States or foreign patent, copyright, trademark, or other

intellectual property right.   Mil-Pac shall at its own expense either procure for Buyer the right to continue using an alleged infringing Item, replace it with non-infringing Item, or modify it so that it becomes non-infringing. The foregoing indemnity shall not apply unless Buyer informs Mil-Pac of any suit or action or other proceeding alleging infringement and gives Mil-Pac the opportunity as is afforded by applicable laws, rules, or regulations, to control the defense thereof.

12. Order of Precedence – The rights and obligations of the parties shall be subject to and governed by the Agreement. In the event of an inconsistency between the provisions of the Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order from the highest to lowest degree of precedence: (1) Special Provisions accepted in writing by a Mil-Pac Officer; (2) this Agreement of Terms and Conditions; (3)Buyer's Purchase Order.

13. Severability.   In the event any provision or clause of this Agreement conflicts with governing law or if any arbitration panel or court of competent jurisdiction holds invalid any provision or clause of the Agreement, such provision or clause shall be deemed to be modified to reflect as nearly as possible the parties' intent. The remainder of the Agreement shall remain in full force and effect.

14. Governing Law and Dispute Resolution. Buyer and Mil-Pac agree that claims and disputes related to this Agreement shall be construed and enforced in accordance with, and governed by the laws of the State of California without regard to conflict of laws rules. The United Nations Convention on the International Sale of Goods shall not apply. All claims or disputes arising under or in any way related to this Agreement, including those relating to the validity of this Agreement, which cannot be resolved by the Parties through negotiations within thirty calendar days or such longer period of time as may be mutual agreed in a written document that is signed by a duly authorized representative of each Party shall be resolved by the state or federal courts. Venue for any action brought under or relating to this Order shall exclusively be in a state or federal court of competent jurisdiction in the State of California. The parties hereby irrevocably waive any right to challenge such venue on the basis of forum non conveniens or otherwise. The Parties further agree and consent to accept service of process by certified or registered United States mail, return receipt requested. In the event that an action is commenced by either Party with respect to this Agreement, neither Party shall be entitled to recover its costs and attorneys' fees from the other Party. THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS ORDER.