



## SALES ACKNOWLEDGEMENT – TERMS AND CONDITIONS

1. **GENERAL.** These terms and conditions (including those set forth on the face of this contract) constitute the entire agreement between Customer and Cirque Corporation (CIRQUE) with respect to the product(s) furnished hereunder (“Products”), and acceptance of CIRQUE’s offer to sell such Product(s) is limited by these terms and conditions. No representation, promise or condition not set forth herein shall be binding on either party hereto and no waiver, alteration or modification of any of the provisions hereof shall be binding unless in writing and signed by an authorized representative of CIRQUE.

2. **WARRANTIES.** CIRQUE warrants all Products for one (1) year from date of originally scheduled shipment against defects in material and workmanship under normal use and service. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF, AND CIRQUE EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. **CLAIMS BY CUSTOMER.** CIRQUE shall have no liability on any claim by Customer with respect to any Product furnished hereunder alleged to be defective or otherwise not in conformity with any warranty expressed in the terms and conditions hereof unless written notice specifying such claim shall be received by CIRQUE having been sent by Customer within ten (10) days after receipt by Customer of the Product(s) furnished hereunder to which such defect or non-conformity is alleged. Failure to so notify CIRQUE shall constitute a waiver of any and all claims with respect to such Product(s).

4. **ACTIONS.** No action may be maintained by Customer or others against CIRQUE with respect to Product(s) furnished hereunder unless a timely written claim has been made in accordance with Section 3 above and unless any such action or proceeding is commenced within one year after receipt by Customer of the Product(s) furnished hereunder to which such action or proceeding relates.

5. **CUSTOMER REMEDIES.** In the event any Product furnished hereunder is found to be defective or otherwise not in conformity with these terms and conditions or with any warranty expressed in these terms and conditions, CIRQUE’s obligations under this provision are limited, at CIRQUE’s sole option, to (i) replacing, (ii) repairing or (iii) giving credit for any Product which shall, within its respective warranty period, be returned to CIRQUE’s factory, transportation charges prepaid, and which is, after examination, determined to CIRQUE’s satisfaction to be thus defective. Prior to returning any Product to CIRQUE, Customer must request and obtain a Return Material Authorization form from CIRQUE. The Customer’s remedies for defective or non-conforming Products shall be limited exclusively to those set forth in this Section 5.

6. **PATENT INFRINGEMENT.** Customer shall hold CIRQUE harmless from and defend CIRQUE against any cost, expenses, damages or liabilities arising from CIRQUE’s compliance with Customer’s designs, instructions or specifications. Except as set forth above, CIRQUE agrees to protect and hold harmless Customer from claims, demands, or proceedings resulting from any alleged infringement in the United States of patents owned by third parties by Products purchased by Customer from CIRQUE, provided Customer gives to CIRQUE prompt notice of any such claim made against Customer and authorizes CIRQUE to settle and defend any such claim, demand, proceeding or action and assists CIRQUE in so doing upon request by CIRQUE. Should, as a result of such claim, demand, or proceeding, Customer be enjoined from selling or using the Product, CIRQUE shall, in its sole discretion, either (1) procure for Customer the right to use or sell the Products; (2) modify the Product so that it becomes non-infringing; (3) upon return of the Product provide to Customer a non-infringing product meeting the same functional specifications as the Product; or (4) authorize the return of the Product to CIRQUE and upon its receipt refund to Customer the cost of the Product. The foregoing states the entire liability of CIRQUE for infringement of the patents of third parties, and in particular, CIRQUE has no obligation to indemnify Customer for infringement of patents resulting from combinations of Products with other products whether or not supplied by CIRQUE. This provision is stated in lieu of any other express, implied or statutory warranty against infringement and all such other warranties are specifically disclaimed. This provision is set forth as the sole and exclusive remedy for patent infringement of any kind.

7. **LIMITATIONS OF LIABILITY.** INDEPENDENTLY OF ANY OTHER REMEDY LIMITATION HEREOF AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY SUCH LIMITED REMEDY, IT IS AGREED THAT IN NO EVENT SHALL CIRQUE BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND IN NO EVENT SHALL THE LIABILITY OF CIRQUE ARISING IN CONNECTION WITH ANY PRODUCT SOLD HEREUNDER (WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED ON CONTRACT, WARRANTY, TORT OR OTHERWISE) EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER TO CIRQUE FOR SUCH PRODUCTS.

8. **FORCE MAJEURE.** CIRQUE shall be excused from performance and shall not be liable for any damage caused by or resulting from delays in delivery or in performance or from total or partial failure to manufacture or deliver due to: floods; riots; strikes (including, without limitation, dock strikes); lock-outs; labor difficulties; freight embargoes or transportation delays; shortage of labor; storms; acts of God or public enemy; voluntary quotas; restrictions or controls; any existing or future laws or acts of government (including specifically but not exclusively any orders, rules or regulations issued by any official or agency of any government) affecting the conduct of CIRQUE business with which CIRQUE in its judgment and discretion deems it advisable to comply, or to any like or unlike cause beyond CIRQUE’s reasonable control. If reasonably required due to the foregoing, CIRQUE may at its option delay or cancel (in whole or in part) its obligation(s) hereunder to deliver or otherwise perform, and in the event that CIRQUE is unable, due to the foregoing, to satisfy the total demand for the Product(s) to be furnished hereunder and for similar products, CIRQUE may allocate its available supply among any or all customers on such basis as CIRQUE may deem fair and reasonable, in each case without any liability for any damages caused by or resulting from such delay, cancellation or allocation.

9. **TERMS OF PAYMENT; CONDITIONS OF CREDIT.** Payment for the Product(s) furnished hereunder is to be made by Customer to CIRQUE in U.S. Currency within the period of time specified on the face of this contract or, if no such time is there specified, upon receipt of Product to be furnished hereunder. At any time when Customer's financial condition, in CIRQUE's judgment, does not appear to justify continuation of the terms of payment herein agreed upon, CIRQUE may take such action as it considers prudent to assure payment, including, without limitation thereto, requiring Customer to make full or partial payment in advance of delivery and/or to make a written representation of solvency satisfactory to CIRQUE. If Customer shall fail at any time to make any payment when due hereunder or otherwise to fulfill the terms of this or other contracts between the parties hereto, CIRQUE may, without prejudice to other lawful remedies, (a) defer further deliveries or other performance under this contract until all such defaults by Customer have been fully cured, or (b) cancel this contract.

10. **ADDITIONAL CHARGES/TAXES.** Customer shall bear all applicable federal, state, municipal and other government taxes (such as sales, VAT or similar taxes); all customs duties, imports, and similar charges; and all personal property taxes assessable on Products after delivery to the carrier at the designated facility.

11. **DELIVERY.** Unless otherwise indicated on the face of this contract or by mutual written agreement, all shipments hereunder shall be Ex Works. Customer shall be responsible for Product from point of loading, including ocean freight, insurance, customs clearance and final transport costs. Shipment dates are estimates only and are dependent upon prompt receipt of all necessary Customer information. Shipments may be made in installments. If Customer requests postponement of shipments beyond the date(s) specified on the face of this contract and CIRQUE consents to such postponements, Customer shall pay all storage and interest charges resulting from such postponement. CIRQUE provides standard industry lead times and shall confirm a purchase order's shipping schedule upon receipt of the order. Delays from a supplier, however, may alter the schedule. If this occurs, Customer shall be given the option to maintain the confirmed cost with shipment at a later date or expedite the shipment at additional cost to the Customer.

12. **CANCELLATIONS.** All purchase orders are accepted on a non-cancelable, non-returnable basis. Requests for cancellations are subject to negotiation at the time of the request and may include charges beyond the cost of the Product.

13. **MODIFICATION.** This contract constitutes the entire agreement between the parties relating to the sale of goods described on the face of this contract and supersedes all previous communications, representations or agreements, either oral or written, with respect to the subject matter hereof. No representations or statements of any kind made by any representative of CIRQUE, which are not stated herein, shall bind CIRQUE.

14. **ASSIGNMENT; TRANSFER.** Customer shall not assign this order, or any interest or right herein, without the prior written consent of CIRQUE, which consent may be granted or withheld in CIRQUE's sole discretion

15. **WAIVER.** CIRQUE's waiver of any breach or failure to enforce any of these terms and conditions or other rights hereunder shall be construed as a waiver of any breach of the same or any other provision or right hereunder.

16. **SEPARABILITY.** In the event any provision or Section of these terms and conditions shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions or Sections shall not in any way be affected or impaired thereby.

17. **GOVERNING LAW.** This agreement shall be governed by and enforced in the courts of the County of Salt Lake, Utah in accordance with Utah law as applied to contracts entered into in Utah by Utah residents to be performed entirely within the State of Utah.

18. **ATTORNEYS FEES AND INTEREST.** Customer shall be responsible for CIRQUE's reasonable attorney's fees and costs associated with the enforcement of the terms hereof or the collection of any amounts due, including interest, hereunder.

19. **EXPORT CONTROL.** Customer shall adhere to the U.S. Export Administration Laws and Regulations and shall not export (either real or deemed) or re-export technical data or products received or the direct product of such technical data to any proscribed country listed in the U.S. Export Administration Regulations unless properly authorized by the U.S. government.

20. **CONFIDENTIAL INFORMATION.** All information disclosed by CIRQUE to Customer shall be CIRQUE's property and shall be held in strict confidence by Customer and used solely for the performance of this Agreement. Customer shall take precautions to (a) disclose such information within Customer's organization only to those employees and agents who have a need to know in order to fulfill Customer's purpose and obligations hereunder and who agreed to keep the information confidential, and (b) to prevent any such information from being divulged to third persons not employed to Customer, including recipients who acknowledge the confidential status of such information and agree to similar restrictions.

21. **COMPLETE AGREEMENT.** CIRQUE and Customer agree that this document and all documents incorporated herein form the complete and exclusive agreement between the Parties and cannot be amended or modified except in writing and by an Officer of both parties.