

Synapse Wireless, Inc. Terms and Conditions of Purchase - US

- 1. ENTIRE AGREEMENT:** Synapse Wireless, Inc. (“Buyer”) may agree from time to time to purchase Goods and/or Services from Seller. These Terms and Conditions of Purchase, any applicable order for Goods and/or Services from Buyer (“Order”) and any other of Buyer’s specifications constitute the entire agreement between the parties with respect to Goods and Services (collectively the “Agreement”). No other or inconsistent terms of Seller, no modification, amendment or waiver to this Agreement and no cancellation, change or return of any Order will be binding on Buyer until agreed in writing by Buyer’s authorized representative. No representation, promise or term not set forth herein has been or may be relied on by Seller, and any terms not contained in this Agreement are expressly objected to and rejected. Buyer’s acceptance of any Order, whether oral or written, is based on the express condition that Seller agrees to all terms and conditions of this Agreement, including these Terms and Conditions of Purchase. Seller acknowledges that these Terms and Conditions are subject to change from time to time and the parties agree that each Order will be governed by the version of these Terms and Conditions available online at the time of such Order. Seller’s acknowledgment of this Agreement, the delivery of Goods or performance of Services referenced herein or presentation of an invoice by Seller will constitute Seller’s acceptance of this Agreement.
- 2. COVERAGE OF AGREEMENT:** This Agreement will govern and control all Goods and Services provided by Seller to Buyer, now or in the future, regardless of whether performed pursuant to written Order(s) issued by Buyer, other written agreement(s) executed by the parties, and/or verbal request(s) issued by Buyer, and will remain in effect until either party provides the other with sixty (60) days’ advance written notice of termination. Each party agrees that this Agreement will also govern all sales of Goods and provision of Services to any subsidiary, affiliate or division of Synapse Wireless, Inc., in which case such subsidiary, affiliate or division will be the “Buyer” under this Agreement (unless otherwise agreed in writing by such subsidiary, affiliate or division). The term “Buyer” also includes Buyer’s employees, agents, officers, directors, successors and assigns. The term “Seller” refers to the vendor providing Goods and Services to Buyer, together with its employees, agents, subcontractors, suppliers and all other persons performing Services or supplying Goods on Seller’s behalf. The terms “Goods” or “Services” whether used together or separately and wherever appearing in this Agreement mean (i) any and all products, supplies, materials, processes and/or equipment and/or (ii) any and all services, work or labor of any kind furnished or performed by Seller under this Agreement and any subsequent amendments, changes or modifications hereof.
- 3. PRICE; PAYMENT; TAXES; DELIVERY; INSPECTION:** The cost of Goods and Services performed by Seller and payment terms will be those specifically set forth in any applicable Order, except that Buyer will receive the benefit of any price declines to actual time of shipment. Seller will pay all contributions, taxes and premiums payable under federal, state and local laws measured on the payroll of employees engaged in performance of Services under this Agreement, including FICA and unemployment compensation premiums and all excise, transportation, occupational and other taxes applicable to receipts under this Agreement and on all Goods or Services furnished. Unless otherwise stipulated in any applicable Order, Goods will be shipped DAP (Delivered at Place) (per Incoterms[®] 2010). Title will pass to Buyer only upon delivery to Buyer’s specified end destination on Buyer’s shipping date AND acceptance by Buyer. Seller will inspect and test all Goods prior to shipment. Notwithstanding any other inspection or testing or prior payment, all Goods and Services will be subject to inspection and approval by Buyer within a reasonable time after delivery to ensure compliance with plans and specifications at all times, but such approval will not relieve Seller of its duty to ensure proper performance of Services, for which it is solely responsible. The right to perform such inspections will not be construed as a reservation by Buyer of the right to control Seller’s work. Buyer reserves the right to reject and refuse any Goods and Services that do not comply with the terms of this Agreement or Buyer’s specifications.
- 4. SELLER’S RESPONSIBILITIES: TIME IS OF THE ESSENCE IN THIS AGREEMENT.** Seller will: (a) perform Services diligently and complete Services and deliver Goods in accordance with the provisions of this Agreement; (b) maintain the jobsite free of waste material and rubbish and clear the jobsite upon completion of contracted Services; (c) provide all necessary safeguards for protection and maintenance of Services performed; and (d) repair and restore or replace (at Buyer’s option) any real or personal property belonging to Buyer which Seller may damage or destroy while performing Services and provide all accessories or parts required for Buyer’s use of any Goods at no additional charge. Seller performs Services at its OWN RISK. The safety of all persons employed by Seller, and/or any other person who enters upon Buyer’s premises for reasons relating to Services, will be solely Seller’s responsibility. Seller will enforce strict discipline and maintain good order among its employees and will not employ any unfit person or anyone not skilled in Services assigned to him. Seller will take all reasonable measures and precautions for the safety of its employees and subcontractors so as to prevent injuries to any person who enters upon Buyer’s premises and will comply with all applicable provisions of federal, state and local safety laws. Such measures and precautions will include without limitation utilizing all safeguards and warnings necessary to protect against any conditions on Buyer’s premises. Seller will confine all equipment and its personnel to that area of Buyer’s premises where Services are to be performed and to any other area which Buyer may permit Seller to use. Pursuant to the provisions of the Occupational Safety and Health Act of 1970 (“OSHA”), Seller will furnish its employees a place of employment free from recognized hazards that cause or may cause death or serious physical harm to its employees and will comply with all pertinent standards promulgated under OSHA. It is specifically understood that these duties will be the exclusive responsibility of Seller. Buyer will have no responsibility to ensure that Seller provides a safe working environment and/or complies with occupational safety and health rules, but Buyer will maintain Safety Data Sheets to the extent required by OSHA and will have them available in its engineering and/or personnel office for inspection and copying by Seller. Seller is responsible for inspecting and complying with Safety Data Sheets

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requirements and for making all other necessary inquiries or investigation in order to ensure a safe workplace. Seller will inform its employees of, and require their compliance with, Buyer's emergency response plan.

5. CHANGES AND EXTRAS: Buyer reserves the right to make changes to Services or Goods by written request to Seller. Before proceeding with any Services involving possible claims for extra compensation, Seller will submit in writing to Buyer a detailed proposal related to the projected increase or decrease occasioned by such contemplated change and will secure from Buyer a written document describing such Goods and fixing Seller's compensation. If the parties cannot promptly agree on the change in price and/or that the matters under discussion constitute a change in Services, Buyer may, at its sole discretion, order Seller to proceed under protest in accordance with Buyer's interpretation of the matter in dispute. The parties will then continue to negotiate an agreement. Seller will not make any changes in Goods or Services (regardless of net cost effect) without Buyer's prior written consent.

6. INDEMNITY: Seller will be responsible to the fullest extent permitted by applicable law to indemnify, defend and hold Buyer harmless from and against any and all claims, losses, suits, damages, liabilities, settlements, expenses and costs (including without limitation attorneys' fees and other costs of litigation) that, directly or indirectly, arise from or relate to (a) any breach or violation of any term of this Agreement, including any warranty or guarantee; (b) sickness, disease, death or injury ("Injuries") to any person or persons, including without limitation those Injuries that result solely or concurrently from Buyer's negligence; and (c) injury to property (including loss of use thereof) of Buyer or others arising out of or in any way connected with Goods or performance of Services, including without limitation those that result solely or concurrently from Buyer's negligence; provided, however, that Seller will have no obligation to indemnify Buyer for claims or losses described in clause (b) and/or (c) above that arise solely from Buyer's intentional misconduct. Seller warrants that any Goods and processes purchased pursuant to this Agreement, and the sale and/or use thereof, will not infringe any U.S. Letter Patent. Seller agrees to defend and indemnify Buyer from and against all claims, damages, actions or causes of action at law or in equity, together with all expenses and attorneys' fees, incident to any infringement or claimed infringement of any patent(s) and/or license(s) arising from use or sale of Goods. In the event that Seller provides to Buyer any Goods or process to be utilized by Buyer subsequent to Seller's completion of Services, Seller will, at no expense to Buyer, provide to Buyer upon final payment a paid-up, irrevocable, royalty-free, nonexclusive license to operate said Goods and/or perform said processes. In the event that Seller is unable to secure such license, Seller will, at no expense to Buyer, modify the Goods so as to render them non-infringing or will remove the Goods and replace them with Goods which will not infringe upon any licenses or patents, provided they continue to meet the specifications of this Agreement.

7. INSURANCE: Seller will maintain and require its subcontractors to maintain in effect through the entire term of this Agreement insurance coverage (in an "occurrence" policy form) with insurance companies and in amounts satisfactory to Buyer in its sole discretion insuring: (a) Seller's indemnity obligations under this Agreement; (b) workers' compensation for occupational diseases and for Injuries sustained by Seller's employees or employees of its subcontractors as required by law; and (c) Seller's and/or Buyer's liability for any property damage, Injuries sustained by any person or persons, including Seller's employees, which was in any manner caused by, arising from or related to Goods or Services performed by Seller and/or the condition of Buyer's land, buildings, equipment or vehicles, regardless of whether the alleged Injury or damage was caused or alleged to be caused in whole or in part by Buyer's conduct. Prior to commencement of any Services, Seller will furnish certificates of insurance in the standard ACORD form showing "Synapse Wireless, Inc., its divisions and subsidiaries" as certificate holder and including: (i) a statement that notice of cancellation will be provided in accordance with policy provisions; (ii) a statement that the certificate holder is additional insured on the policies for occurrences arising from or related to the Goods or Services; and (iii) a waiver of any and all rights of subrogation against the certificate holder. Policies maintained pursuant to this Section will be primary, not excess or contributory, in regard to any other applicable policies Buyer might have. The insurance required by this Section will not limit Seller's liability to Buyer under this Agreement or limit the rights or remedies available to Buyer at law or in equity.

8. WARRANTIES AND GUARANTEES: Seller warrants that it has clear title to all Goods furnished and that they are free of all liens, encumbrances and security interests. Unless otherwise specified in writing by Buyer, all Goods provided by Seller will be new. In addition to all warranties prescribed by law or given by Seller, all Goods and Services (including any approved samples) will be of good quality, will conform to the requirements of this Agreement and Buyer's specifications, descriptions and drawings, will be merchantable and fit for Buyer's intended use and will be free from defects in design, material and workmanship. All Services provided by Seller will be performed by qualified and competent personnel in a professional manner using the highest standards of quality and workmanship. If Seller encounters unknown or latent conditions which could impair the performance or quality of Goods or Services, Seller will give immediate notice of the nature of such condition to Buyer. Seller will obtain from subcontractors and vendors all available warranties and guarantees with respect to design, materials, workmanship, equipment and supplies furnished for Buyer's benefit. Should a subcontractor or vendor seek to defend on grounds that Seller committed error, Buyer may enforce this warranty against Seller and Seller will resolve all such issues with the subcontractor/vendor. This warranty will survive Buyer's acceptance of Goods or Services.

9. DEFAULT; REMEDIES: Each of the following will constitute an event of "Default" by Seller: (a) failure to complete Services or deliver Goods within the time or with the quality specified or guaranteed in this Agreement; (b) failure to comply with any provisions of this Agreement including breach of any warranty or guarantee; or (c) adjudication of Seller as bankrupt or Seller's making a general

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assignment for benefit of creditors or appointment of a receiver on account of Seller's insolvency. Upon Seller's Default, Buyer may immediately, without prejudice to any other right or remedy it may have at law or in equity: (1) terminate the relationship with Seller or any pending Orders with Seller and obtain a return of all money already paid to Seller for Goods and Services, or, at its sole option and without liability to Seller, suspend Services or delivery of Goods and/or exclude Seller from Buyer's premises until Seller furnishes satisfactory evidence that such Default has been cured; (2) take possession of any of Buyer's samples and materials held by Seller; (3) finish Services or correct any non-conformity at Seller's expense by whatever method Buyer deems expedient; (4) reject, repair or replace non-conforming Goods or Services or procure same or similar Goods or Services from another source, in which case Seller will be liable to Buyer for any additional costs or expenses incurred by Buyer; or (5) require Seller to correct or cure any non-conformity at Seller's expense. In addition, Buyer reserves all other rights and remedies available to it at law or in equity. Seller agrees to cooperate with Buyer in any way reasonably required to complete Services or purchase replacement Goods. In such case, Buyer will pay for that portion of Services previously completed by Seller, subject to the terms and provisions above. In addition to its other remedies, Buyer will have a right of set-off and may withhold from time to time out of monies due Seller, amounts sufficient to fully compensate Buyer for any loss or damage resulting from any Default or breach by Seller. As an alternative, Buyer may, in its sole discretion, extend the delivery or completion schedule or waive any deficiencies in performance; provided, however, that no such waivers or extensions will be binding unless in writing and signed by Buyer's authorized representative. Buyer will have the right at any time to require adequate assurances of Seller's performance. In any action or proceeding between the parties, the prevailing party will be entitled to recover all of its reasonable attorneys' fees, expenses and other costs of litigation.

10. LIENS: Seller will pay, satisfy and discharge all mechanics', suppliers', materialmen's and other liens and all claims, obligations and liabilities which may be asserted against Buyer or its property by reason of, or as a result of, Seller's acts or omissions relating to furnishing of Goods or performance of Services governed or controlled by this Agreement.

11. LABOR RELATIONS: Seller will promptly undertake all reasonable efforts to prevent or resolve any strikes or other labor disputes among its employees or employees of its subcontractors. If such a dispute occurs, Seller will take all reasonable actions to minimize any disruption of performance of Services. Seller will immediately advise Buyer in writing of any possible labor dispute which may affect performance of Services.

12. COMPLIANCE WITH LAWS: Seller in the performance of this Agreement will comply with all applicable federal, state and local laws, codes, regulations and ordinances, including: (a) all applicable environmental laws; (b) all applicable international trade laws, including but not limited to laws and regulations regarding export controls, economic sanctions, trade embargoes and anti-boycott restrictions, and all applicable anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (as amended), the United Kingdom Bribery Act and the conflicts minerals provisions of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act; (c) all applicable laws and regulations addressing human trafficking and slavery; and (d) all applicable Equal Opportunity requirements including those set forth in Executive Order 11246, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and regulations promulgated thereunder and laws prohibiting discrimination against any person because of veteran status, disability, race, creed, color, national origin, religion, age or sex in any term or condition of employment, which are incorporated herein by this reference. **Specifically, Seller and its subcontractors and vendors will abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.** Seller will take reasonable measures to ensure that those who supply components or materials that are incorporated into Goods supplied to Buyer also comply with such laws and regulations. Seller will obtain, at its sole expense, all necessary permits and licenses prior to commencement of Services and make copies of all such permits and licenses available to Buyer upon request. If Services involve or require Seller to transport or dispose of any material or waste, prior to beginning Services, Seller will furnish Buyer with copies of all applicable or required permits and licenses and notify Buyer in writing of the final and any interim destination of material or waste, including in such notice verification that the place of disposal is validly authorized and permitted to accept the material or waste.

13. CONTROLLING LAW; CONSENT TO VENUE; DISPUTE RESOLUTION: This Agreement and all rights and obligations hereunder will be governed by and construed in accordance with the laws of the State of Alabama, without regard to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All disputes, claims or controversies (individually or collectively, a "Dispute") between the parties arising out of or relating to transactions contemplated by this Agreement, including without limitation Disputes based on or arising from an alleged tort, may be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Disputes will be arbitrated in Birmingham, Alabama. Defenses based on statutes of limitation and similar doctrines will be applicable in any such proceeding, and commencement of an arbitration proceeding under this Agreement will be deemed commencement of an action for such purposes. The parties will select arbitrators in accordance with the Commercial Arbitration Rules of the AAA. The AAA will designate a panel of ten (10) potential arbitrators knowledgeable in the subject matter of the Dispute. Each party will designate,

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within thirty (30) days of the receipt of the list of potential arbitrators, one of the potential arbitrators to serve, and the two arbitrators so designated will select a third arbitrator from the eight remaining candidates. No Dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person ("Collective Proceedings"). Accordingly, AAA's Supplementary Rules for Class Arbitrations will not be applicable. If this limitation on Collective Proceedings is held by a court of competent jurisdiction to be unenforceable or interpreted to not prevent a Collective Proceeding, then such action will proceed in a court of law as provided below and not arbitration. If any arbitrator renders a decision regarding the question of arbitrability of the above limitation or orders any form of Collective Proceeding, then the arbitrator has exceeded its powers under the Federal Arbitration Act. Notwithstanding the foregoing, Buyer reserves the right to resolve or bring any Dispute in a court of competent jurisdiction in the state and federal courts of Alabama, to which jurisdiction each party hereby irrevocably submits. Each party waives any objection or defense that it is not personally subject to the jurisdiction of the state and federal courts of Alabama; that venue of the action is improper; and that the action, suit or proceeding is brought in an inconvenient forum. In addition to any other mode of service of process authorized by law, each party consents to service of process by registered or certified mail.

14. MISCELLANEOUS

- (A) **WAIVER:** No waiver of any provision, right or remedy contained in this Agreement, including the terms of this Section, is binding on, or effective against, Buyer unless expressly set forth in writing and signed by Buyer's authorized representative. Seller expressly agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage. Seller expressly agrees and acknowledges that reliance on any waiver without Buyer's written consent is unreasonable. Buyer's waiver of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. Buyer's approval or consent to any action proposed by Seller will not be considered an agreement to the propriety, fitness or usefulness of the proposed action, and will not affect Seller's obligation to strictly comply with this Agreement and all related Orders.
- (B) **SUBLETTING AND ASSIGNING:** Seller will not assign any contract and/or purchase order or sublet or delegate any part of Services to be performed on Buyer's premises without Buyer's prior written consent. In the event that such consent is given, it will not relieve Seller from any of its obligations under this Agreement or of any contract, Order or agreement (whether written or oral) between the parties. Any transferee or subcontractor will be considered Seller's agent and, as between Buyer and Seller, Seller will be and remain liable as if no such transfer or subletting had been made. Any attempted assignment, sublet or delegation in contravention of this Section will be void. However, this Agreement and the terms and conditions contained herein are enforceable against Seller's successors and permitted assigns.
- (C) **CUMULATIVE NATURE OF REMEDIES:** Buyer's remedies under this Agreement are cumulative and in addition to any other remedies available to Buyer, whether at law, equity or otherwise.
- (D) **SEVERABILITY:** If any provision or part of a provision contained in this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Agreement will remain in full force and effect.
- (E) **CONSTRUCTION:** No provision of this Agreement may be construed against Buyer as the drafting party.
- (F) **RELATIONSHIP OF PARTIES:** Seller will at all times be an independent contractor with respect to Goods and Services and not an agent or employee of Buyer. Any services provided by Seller will be carried on by Seller according to its own methods subject only to specifications and agreements outlined in this Agreement or pursuant to any applicable Order. Seller will have full and exclusive control of its employees engaged in performance of Services or manufacture or delivery of Goods.
- (G) **FORCE MAJEURE:** Other than as set forth herein, neither party will be liable for delays in performance caused by acts of God, strikes or labor disturbances or other delays in performance due to any contingency beyond the party's control. In the event of any such occurrence, the period for the party's performance affected thereby will be extended for such period as reasonably required under the circumstances.