

These Terms and Conditions of Sale and Service ("Terms") govern the sale of Products and Support and the license of Software by Sifos Technologies, Inc. ("Sifos") to another party ("Customer").

## **1. DEFINITIONS**

- a) "Product(s)" are defined as any hardware sold or Software licensed under these Terms.
- b) "Specifications" are specific technical information about Products which is published by Sifos and is in effect at the time Sifos ships Customer's order.
- c) "Standard Products" are defined as Products manufactured to meet Sifos published Specifications and marketed to many customers.
- d) "Refurbished Products" are defined as Standard Products previously utilized by Sifos or Sifos customers and subsequently re-manufactured and tested to meet Sifos published Specifications.
- e) "Custom Products" are defined as Products manufactured or configured to meet Customer requirements.
- f) "Software" is defined as one or more computer programs in object code format, whether stand-alone or bundled with other Products, and related documentation provided to Customer under these Terms.
- g) "Delivery" is defined as the specific time when Sifos places the Product(s) at Customer's designated site as agreed to by Sifos and Customer, or at the location specified in the quotation or order acknowledgement provided by Sifos.
- h) "Support Services" are defined as any standard service such as hardware maintenance and repair; Software updates and maintenance; or training.
- i) "Support Period" is defined as the time interval during which Sifos is obligated to provide Support Services to the Customer.
- j) "Support Agreement" is defined as a specific agreement for Support Services enacted with a Customer specifying the Support Period, pricing, Products supported, and types of Support Services to be provided by Sifos.
- k) "Custom Support" means Support Services adapted to meet Customer requirements.

## **2. PRICES**

- a) Prices include shipping and handling charges to the location agreed to by Sifos and Customer, or the location specified in the quotation or order acknowledgment. Prices are valid for the period indicated on the quotation. Support Services prices, except for prepaid and Custom Support, may be changed by Sifos upon 60 days written notice.
- b) Prices exclude any sales, value added or similar tax which will be payable by Customer in addition to the purchase price if applicable. If exemption from taxes is claimed, Customer must provide a certificate of exemption.

## **3. ORDERS AND RETURNS**

- a) All orders are subject to acceptance by Sifos. Product orders must specify Delivery within 120 days from order date.
- b) Customer may cancel orders for Products (except Custom Products) prior to shipment at no charge.
- c) Cancellation of orders or rescheduling shipment for Custom Products will be subject to additional service charges at Sifos' discretion. Product returns will also be subject to Sifos' approval and return/refurbishment charges.

## **4. SHIPMENT AND RISK OF LOSS**

- a) Sifos will make reasonable efforts to meet Customer's Delivery requirements. If Sifos is unable to meet Customer's Delivery requirements, alternative arrangements should be determined to the mutual satisfaction of Sifos and the Customer. In the absence of such determination, Customer's sole remedy is to cancel the order.
- b) Title to hardware Products and risk of loss and damage will pass to Customer upon Delivery. If special shipping instructions are required by Sifos or the Customer, title to hardware Products and risk of loss and damage will pass to Customer on delivery to Customer's carrier.

## **5. INSTALLATION AND ACCEPTANCE**

- a) For Standard Products, Refurbished Products, and Software, acceptance occurs upon Delivery.
- b) For Products requiring installation services by Sifos for which such services are included in the purchase price, acceptance by Customer occurs upon completion of installation services by Sifos.

- c) If Customer schedules or delays installation services by Sifos more than 30 days after Delivery, Customer acceptance of the Product(s) will occur on the 31st day after Delivery.

## 6. PAYMENT

- a) All payment terms are subject to Sifos credit approval.
- b) Payment is due 30 days from Sifos's invoice date.
- c) Invoices for contractual Support Services will be issued in advance of the Support Period.
- d) Sifos may change credit or payment terms at any time should Customer's financial condition or previous payment record so warrant.
- e) Sifos may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other Sifos agreement if, after 10 days written notice, the failure has not been cured.

## 7. WARRANTY

- a) Sifos warrants hardware Products against defects in materials and workmanship for a period of one year, unless otherwise stated within Sifos' approved quotation, commencing upon Delivery. Sifos further warrants that hardware Products conform to Specifications.
- b) Sifos warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the hardware designated by Sifos for a period of 90 days commencing upon Delivery. Sifos further warrants that Sifos owned standard Software will substantially conform to Specifications.
- c) If Sifos receives notice of defects or non-conformance as defined in Sections 7(a) and 7(b) during the warranty period, Sifos will, at its option, repair or replace the affected Product(s). Customer will pay expenses for return of such Product(s) to Sifos. Sifos will pay expenses for shipment of repaired or replacement Product(s). If Sifos is unable, within a reasonable time, to repair or replace the affected Product(s), Customer will be entitled to a refund of the purchase price upon prompt return of the Product(s) to Sifos.
- d) Sifos warrants that Support Services will be provided in a professional and workmanlike manner.
- e) Some newly manufactured or repaired Sifos Products may contain remanufactured parts which are equivalent to new in performance.
- f) Unless otherwise stated, the warranty period for Refurbished Products and Custom Products will be 90 days commencing upon Delivery.
- g) Sifos does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- h) Sifos does not warrant that the operation of Products will be uninterrupted or error free.
- i) The above warranties do not apply to defects resulting from improper or inadequate maintenance, repair or calibration by Customer; Customer or third party supplied hardware or software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications for the Product; abuse, negligence, accident, loss or damage in transit; or improper site preparation.
- j) THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. SIFOS SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 8. SUPPORT

- a) Support Services offered by Sifos under a Support Agreement (i.e. Software Support Exhibit, System Support Exhibit) will be subject to the terms of that Support Agreement and, unless otherwise specified, to the terms of this Section (8).
- b) Support Services offered by Sifos under a per-instance support quotation will be subject to the terms of that quotation and, unless otherwise specified, to the terms of this Section (8).
- c) To be eligible for Support, Products must be at current specified revision levels and, in Sifos' reasonable opinion, in good operating condition.
- d) Product relocation may result in additional Support Services charges and modified service response times. Support of Products moved to another location is subject to availability.
- e) Sifos is not responsible for supporting any products not specified within the Support Agreement or the Support Services quotation regardless of the origin of those products. The Customer is responsible for the removal or separation of unsupported products from

those products included in the Support Agreement or the Support Services quotation. Sifos reserves the right to add additional support charges in the event that Support Services are intentionally or unintentionally extended to unsupported products.

- f) e)Support does not cover any damage, defects or failures caused by:
  - 1) Use of non-Sifos media, supplies and other products;
  - 2) Site conditions that do not conform to Sifos' site specifications; or
  - 3) Neglect, improper use, fire or water damage, electrical disturbances, transportation, work, or modification by non- Sifos employees or subcontractors, or other causes beyond Sifos's control.
- g) Customer is responsible for maintaining a procedure external to the Products to reconstruct lost or altered Customer files, data or programs. Customer will have a representative present when Sifos provides Support services at Customer's site. Customer will notify Sifos if Products are being used in an environment which poses a potential health hazard to Sifos employees or subcontractors. Sifos may require Customer to maintain such Products under Sifos supervision.
- h) Either party may delete Products under a Support Agreement or cancel a Support Agreement upon 60 days written notice.

## **9. LICENSES**

- a) Sifos grants Customer a non-transferable, worldwide, non-exclusive license to use the Software for internal purposes in accordance with the documentation provided with the Software. Such documentation may include license terms provided by Sifos's third party suppliers, which will apply to the use of the Software and take precedence over these license terms. In the absence of documentation specifying the applicable license, Customer is granted the right to use one copy of the Software on one machine or instrument, or as otherwise indicated on the quotation.
- b) The Software is owned and copyrighted by Sifos or its third party suppliers. Sifos and its third party suppliers retain all right, title and interest in the Software. Third party suppliers may protect their rights in the Software in the event of any violation of these license terms.
- c) Customer will not disassemble or otherwise modify the Software without written authorization from Sifos, except as permitted by law. Customer may not copy the Software onto any public or distributed network.
- d) Sifos may terminate Customer's license upon notice for breach of these license terms. Customer must destroy all copies of the Software immediately upon notice of termination.
- e) Software and technical data rights granted to the federal government include only those rights customarily provided to end user Customers. Sifos provides this customary commercial license in Software and technical data pursuant to FAR 12.211 (Technical Data) and 12.212 (Computer Software) and, for the Department of Defense, DFARS 252.227-7015 (Technical Data – Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

## **10. INTELLECTUAL PROPERTY CLAIMS**

- a) Sifos will defend or settle any claim against Customer that Products (excluding Custom Products) delivered under these Terms infringe on intellectual property right in the country where the Products are used or sold, provided Customer promptly notifies Sifos in writing, and cooperates with and provides control of the defense or settlement to Sifos, to the extent legally permissible.
- b) In the event of an infringement claim under section (a), Sifos will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, Sifos may, at its option, modify the Product, procure any necessary license, or replace it. If Sifos determines that none of these alternatives is reasonably available, Sifos will refund Customer's purchase price upon return of the Product.
- c) Sifos has no obligation for any claim of infringement arising from:
  - 1) Sifos's compliance with, or use of, Customer's designs, specifications, instructions or technical information;
  - 2) Product modifications by Customer or a third party;
  - 3) Product use prohibited by Specifications or related application notes; or
  - 4) Use of the Product with products not supplied by Sifos.
- d) These terms state Sifos's entire liability for claims of intellectual property infringement.

## **11. LIMITATION OF LIABILITY AND REMEDIES**

- a) In no event will Sifos, its subcontractors or suppliers be liable for special, incidental, indirect or consequential damages (including downtime costs, loss of data, restoration costs, lost profits, or cost of cover) regardless of whether such claims are based on contract,

tort, warranty or any other legal theory, even if advised of the possibility of such damages. This exclusion is independent of any remedy set forth in these Terms.

- b) To the extent that limitation of liability is permitted by law, Sifos' total liability to Customer is limited to US \$1,000,000, except that Sifos's obligation to make warranty refunds under Section 7 is limited to the Product purchase price.
- c) The limitations set forth in Sections 11(a) and 11(b) above will not apply to infringement claims under Section 10, or to damages for bodily injury or death resulting from normal operation and usage of Sifos' Products.
- d) The remedies in these Terms are Customer's sole and exclusive remedies.

## **12. GENERAL**

- a) Sifos will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
- b) If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.
- c) Customer who exports, re-exports or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. Sifos may suspend performance if Customer is in violation of applicable laws or regulations.
- d) Disputes arising in connection with these Terms will be governed by the laws of Massachusetts.
- e) Provisions herein which by their nature extend beyond the termination of any sale or license of Products or Support Services will remain in effect until fulfilled.
- f) Neither party's failure to exercise any of its rights under these Terms will be deemed a waiver or forfeiture of those rights.
- g) To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.
- h) The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.
- i) Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance or direct operation of a nuclear facility. Customer is solely liable if Products or Support purchased by Customer are used for these applications. Customer will indemnify and hold Sifos harmless from all loss, damage, expense or liability in connection with such use.
- j) These Terms constitute the entire agreement between Sifos and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase or license of Products and Support will constitute Customer's acceptance of these Terms, which may not be changed except by an amendment signed by an authorized representative of each party.