



Copper Mountain Technologies, LLC

Terms of Sale

These Terms of Sale ("**Terms**") shall define the conditions of the sale of Products and Services, the license of certain software developed by Copper Mountain Technologies, LLC (herein after "**CMT**"), and the Warranty of delivered products.

1. Definitions

- "Products"** means any standard or custom hardware, other consumables, or Software licensed under these Terms.
- "Software"** means one or more computer programs (i) provided with Products on storage media, (ii) downloaded by Customer from CMT's website for use on the Products delivered under a Purchase Order, (iii) and/or custom scripts and related documentation identified in a Purchase Order. "Software" does not include computer programs or scripts created for or delivered to Customer by CMT under a separate agreement.
- "Customer"** means the person(s) or company that purchases the Products or Services from CMT.
- "Service"** means any standard service to support the Products and/or Software development, revisions, updates, maintenance and repairs, or product training.

2. Applicability

- a) These Terms are the only terms which govern the sale of the Products and Services by CMT to Customer. The accompanying quotation, confirmation of sale, purchase order, or invoice which references these Terms (the "**Purchase Order**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The terms and conditions of these Terms shall prevail to the extent such terms and conditions are inconsistent with the Purchase Order.
- b) This Agreement prevails over any of Customer's general terms and conditions of purchase regardless whether or when Customer has submitted its Purchase Order or such terms unless otherwise agreed to in writing by CMT. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.
- c) Notwithstanding anything to the contrary contained in this Agreement, CMT may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Purchase Order.

3. Sale, Delivery and Payment Terms

- a) All Purchase Orders received are subject to acceptance by CMT. Quotations offered by CMT or Purchase Orders received by CMT are not binding until such time that CMT acknowledges the Purchase Order in writing.
- b) Prices exclude any applicable sales tax, value added tax, or similar tax or fees paid by Customer. Customer shall be responsible for all such charges, costs and taxes; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to, CMT's income, revenues, gross receipts, personal or real property, or other assets.
- c) Unless otherwise indicated in the Purchase Order, prices do not include shipping and handling charges. All Products are delivered FOB Origin (Indianapolis, IN) unless otherwise stated on the Purchase Order and acknowledged in writing by CMT.
- d) For Products without installation included in the purchase price, acceptance occurs upon delivery. For Products with installation included in the purchase price, acceptance occurs at the time the Products passes the CMT installation and test procedures. If Customer schedules or delays installation by CMT more than thirty (30) days after delivery, acceptance of the Products occurs on the thirty-first (31st) day after delivery.
- e) Customer shall inspect the Products upon receipt. Customer will be deemed to have accepted the Products as stated above unless it notifies CMT in writing of any Nonconforming Goods no later than 1 day after receipt of the Products and furnishes such written evidence or other documentation as required by CMT. "**Nonconforming Goods**" means only the following: (i) the

Products shipped are different than identified in the Purchase Order; or (ii) the Products' label or packaging incorrectly identifies its contents. If Customer timely notifies CMT of any Nonconforming Goods, CMT shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Products, or (ii) credit or refund the purchase price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship, at Company expense and risk of loss, the Nonconforming Goods to CMT's designated facility. If CMT exercises its option to replace Nonconforming Goods, CMT shall, after receiving Customer's shipment of Nonconforming Goods, ship the replaced Products to Customer, at Company expense and risk of loss. Customer acknowledges and agrees that the remedies set forth in this Section are Customer's exclusive remedies for the delivery of Nonconforming Goods.

- f) As collateral security for the payment of the purchase price of the Products, Customer hereby grants to CMT a lien on and security interest in and to all of the right, title, and interest of Customer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Indiana Uniform Commercial Code.
- g) Payment terms are stated in the Purchase Order and must be acknowledged in writing by CMT. Payment terms are subject to change if Customer's financial condition or payment record merits such change as determined by CMT in its sole discretion. If the Purchase Order is silent as to payment terms, then Customer shall pay all invoiced amounts due to CMT within 30 days from the date of such invoice. Unless otherwise stated in a Purchase Order, Customer shall make all payments hereunder by wire transfer and check and in US dollars.
- h) CMT may elect to charge Customer, and if so elected Customer shall pay, interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse CMT for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.
- i) In addition to all other remedies available under this Agreement or at law (which CMT does not waive by the exercise of any rights hereunder), CMT reserves the right to discontinue performance against any Purchase Order without penalty if Customer fails to pay any sum due, or fails to perform under this Agreement or any other agreement between Customer and CMT, after ten (10) days' written notice, the failure has not been cured.
- j) Delivery dates provided by CMT to Customer are estimates as of the Purchase Order date and CMT shall not be liable for costs or penalties resulting from late delivery; provided, that, CMT will make commercially reasonable efforts to provide Customer with notice of late delivery when practical.
- k) Products are delivered with factory calibration certificates containing no data.
- l) With respect to the Services, Customer shall (i) cooperate with CMT in all matters relating to the Services and provide such access to Customer's premises, systems, networks, and such office accommodation and other facilities as may reasonably be requested by CMT, for the purposes of performing the Services; (ii) respond promptly to any CMT request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for CMT to perform Services in accordance with the requirements of this Agreement; (iii) provide such materials or information as CMT may reasonably request to carry out the Services in a timely manner and ensure that such materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

4. Cancellation and Returns

- a) Customers may cancel all or portions of a Purchase Order for non-customized Products prior to shipment at no additional cost. Customers may return undamaged and unused non-customized Products in the original unopened packaging within 30 days of delivery subject to a 15% restocking charge. Items received due to shipping error shall be returned to CMT in original unopened packaging with no restocking fee and shipping paid by CMT. Cancellations of custom Products are subject to cancellation charges on a per Product basis as determined by CMT in its sole discretion, which may be up to the full value of the Purchase Order.
- b) Customer must request a Return Material Authorization ("**RMA**") number for all Products subject to return for warranty repair or replacement prior to shipment to CMT or authorized repair center. CMT may charge a reasonable processing fee for any of the Products returned for warranty repair or replacement that does not have a RMA.
- c) Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with CMT, whether relating to CMT's breach, bankruptcy or otherwise.

5. Licenses

- a) CMT grants the Customer a worldwide, a non-exclusive, non-sublicensable, and non-transferable, revocable, limited license to use Software solely for internal business purposes and in accordance with documentation provided in connection with the Software. Third-party license terms included with such documentation will take precedence over these license terms.

Customers are hereby authorized to download the Software from CMT's website, or load Software onto multiple computers from the supplied USB drives, subject to the terms of this Agreement. CMT reserves the right to modify or amend such Software with or without notice, and shall make available the latest revision of such Software on its website. CMT assumes no liability, directly or indirectly, for the configuration/revision control of Software maintained at the Customer site. Customer is solely responsible for ensuring the latest version of Software is loaded onto their computer systems.

- b) Without limiting the foregoing and except as otherwise expressly set forth in this Agreement or consented to by CMT in writing, Customer shall not at any time, directly or indirectly (i) modify, rent, lease, lend, sell, assign, copy, duplicate, reproduce, license or sub-license the Software, or transfer or convey the Software or any right in the Software to anyone else without the prior written consent of CMT, (ii) reverse engineer, reverse compile, or reverse assemble Software, modify or translate Software, or copy Software onto any public or distributed network, (iii) remove any proprietary notices from the Software; or (iv) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. CMT reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Software.
- c) Customer acknowledges that, as between Customer and CMT, CMT owns all right, title, and interest, including all intellectual property rights, in and to the Software and all documentation provided in connection with the Software.

6. Warranty

- a) CMT warrants the Products and Services against defects in materials and workmanship under normal operating conditions and that the Products will conform to published specifications, or any custom specifications agree upon, in writing, between CMT and Customer, for a period of thirty-six (36) months from the date of shipment and, for the purchase of Refurbished Products, one (1) year from the date of shipment or the original warranty of the Product if longer than one year. Normal wear and tear shall not be considered a defect.
- b) If CMT receives notice of defect or nonconformance during the warranty period, CMT will, at its option, repair or replace the affected Products. Customer shall pay shipping expenses for the return of the Products to CMT. CMT will pay the expense of shipping the repaired or replaced Products back to Customer. Unless otherwise agreed by the parties in writing, Customer shall be solely responsible for customs documentation and customers procedures to be completely fulfilled in accordance with the applicable legislation.
- c) EXCEPT FOR WARRANTIES EXPRESSLY SET FORTH HEREIN, CMT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. CMT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. DEVELOPER MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.
- d) For Products not manufactured by CMT, CMT's only responsibility is to assign to Customer any manufacturer's warranty that does not prohibit such assignment.
- e) Customers shall not be entitled to any remedy under the above express warranties with respect to: (a) Products that have been subjected to any alteration, disassembly, tampering, modification, or repair without prior written authorization by CMT; (b) Products subjected to experimental operations or any type of operation or use other than that for which the Products are designed; (c) Products from which CMT and/or other manufacturer or supplier trademarks or serial numbers have been altered, removed, or obliterated without prior written authorization by CMT, excluding alteration, removal, or obliteration directly caused by accident or mishap; or (d) Products that have been in storage or left out of service for twenty-four months after delivery.
- f) The Warranty is non-transferrable and is applicable only to the original Customer.
- g) This Warranty shall not be extended, altered, or varied except by written instrument executed and acknowledged by CMT.

7. Intellectual Property

- a) CMT represents that, to its actual knowledge, the Products or Services are free from infringement of intellectual property rights (including patents, trademarks, and copyrights) of others.
- b) CMT has no obligation for any claim of infringement arising from: CMT's compliance with, or use of, Customer's designs, specifications, instructions, or technical information; modifications to the Products by Customer or third party; use of the Products prohibited by or outside the scope of Specifications or related notes; or use of the Products with products not supplied by CMT.
- c) All non-public, confidential or proprietary information of CMT, including but not limited to, non-public Software, specifications,

samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by CMT to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by CMT in writing. Upon CMT’s request, Customer shall promptly return all documents and other materials received from CMT; provided, however, that Customer need not return any non-public software installed on Products. CMT shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure without reference to CMT’s confidential information; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

8. Assumption of Risk; Indemnity and Limitation of Liability

- a) Customer accepts all risks to itself and to any third parties that may result or arise out of Customer’s possession or use of Products and Services and agrees to indemnify and hold harmless CMT, its agents, and employees from all loss, cost, damage, liability, or expense (including damage or injury to person or property (including the Products) and including reasonable legal fees and costs) arising out of its possession or use of the Products and Services.
- b) WITH RESPECT TO ANY REMEDIES EXPRESSLY SET FORTH HEREIN, CMT’S LIABILITY FOR BREACH OF CONTRACT SHALL BE LIMITED TO THE SUCH REMEDIES. WITH RESPECT TO OTHER BREACHES OF CONTRACT, CMT SHALL HAVE NO LIABILITY IN EXCESS OF THE AMOUNT OF THE PURCHASE ORDER. IN NO EVENT SHALL CMT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM COST OF SUBSTITUTE PROCUREMENT, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF REVENUES, LOSS OF BUSINESS, OR FAILURE OR DELAY IN PERFORMANCE, WHETHER BASED ON BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT OR ON ANY STRICT LIABILITY THEORY, EVEN IF CMT HAS BEEN ADVISED OF ANY SUCH DAMAGES. NOR SHALL CMT BE RESPONSIBLE FOR ANY CLAIMS AGAINST CUSTOMER BY A THIRD PARTY.

9. General

- a) Customer who exports, re-exports, or transfers products, technology, or technical data purchased hereunder assumes all responsibility for complying with applicable U.S. and all other laws and regulations (“**Applicable Laws**”), and for obtaining required export authorizations. Customer expressly agrees not to sell or otherwise transfer products, technology or technical data to companies or persons on the Denied Parties List and Specifically Designated Nationals and Blocked Persons List, or to any other prohibited parties or restricted destinations listed in Applicable Laws, unless properly authorized by the appropriate government(s). CMT may suspend performance if Customer is in violation of Applicable Laws.
- b) If CMT’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, CMT shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.
- c) The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- d) CMT shall not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond CMT’s control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, pandemics, endemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and [(i) other similar events beyond the control of CMT.
- e) Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement, including without limitation, confidentiality provisions.
- f) This Agreement may only be amended or modified in a writing stating specifically that it amends this Agreement and is signed by an authorized representative of each party.

10. Calibrations

- a) CMT can perform accredited calibrations for instruments (measurements), for a fee, that are within CMT’s scope of accreditation. Customer shall provide written direction when requesting accredited calibrations (i.e. accredited calibration, or ISO/IEC 17025 calibration required).

- b) Batteries, fuses and lamps are not included in the cost of calibration and are charged separately.
- c) Customer is responsible for the removal, restoration and programming (as applicable) of all instruments returned from calibration. CMT is not required to return instrument settings to the positions such settings were at upon delivery to CMT for calibration or to Customer's preferences.
- d) Customer is responsible for ensuring that instruments calibrated by CMT and its affiliates are free of contamination in accordance with state and federal transportation and/or safety requirements.
- e) CMT performs all work in accordance with ISO 9001: 2008 and/or ISO/IEC 17025 & ANSI/NCSL Z540-1. Customer is responsible for meeting the requirements of their particular quality standards as they relate to their industry and measurement/calibration.
- f) Calibration intervals are assigned by the Customer based on its use, environment and risk. CMT is not liable for improper or faulty intervals requested or set by the Customer or instrument manufacturer.
- g) Customer acknowledges that any number of factors can cause a calibrated instrument to drift out to tolerance at any time following its calibration. CMT warrants that any instrument calibrated by CMT found to be out of tolerance within six (6) months due to defects in the CMT repair or calibration processes will be recalibrated at no charge if such item is returned to CMT.
- h) CMT calibration laboratory is responsible, through legally enforceable commitments, for the management of all information obtained or created during the performance of laboratory activities. The laboratory informs Customer in advance, of the information it intends to place in the public domain. Except for information that Customer makes publicly available, or when agreed between the laboratory and Customer (e.g. for the purpose of responding to complaints), all other information is considered proprietary information and is regarded as confidential.
- i) When the laboratory is required by law or authorized by contractual arrangements to release confidential information, Customer or individual concerned is, unless prohibited by law, notified of the information provided.
- j) Information about Customer obtained from sources other than Customer (e.g. complainant, regulators) is confidential between Customer and the laboratory. The provider (source) of this information is confidential to the laboratory and is not be shared with Customer, unless agreed by the source.
- k) Personnel, including any committee members, contractors, personnel or external bodies, or individuals acting on the laboratory's behalf, keep confidential all information obtained or created during the performance of laboratory activities, except as required by law.

11. Termination

- a) In addition to any remedies that may be provided under this Agreement, CMT may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement and such failure continues for 30 days after Customer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with this Agreement, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

12. Severability

- a) If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

13. Assignment

- a) Neither this Agreement nor Customer's rights hereunder are assignable except with CMT's prior, written consent. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

14. Binding Effect

- a) The covenants and conditions contained in the Agreement shall apply to and bind the Parties and their respective heirs, legal representatives, successors and permitted assigns

15. Governing Law

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

Rev. March 2021