



TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS GOVERN THE SALE OF ALL PRODUCTS AND SERVICES BY AUKUA SYSTEMS, INC. ("AUKUA" OR "SELLER") AND APPLY NOTWITHSTANDING ANY CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY PURCHASE ORDER OR OTHER DOCUMENTS OR COMMUNICATIONS FROM BUYER. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF AUKUA.

If you ("Buyer") and Aukua Systems, Inc. ("Aukua") have signed a written agreement regarding the sale of the products and services listed in the attached sales document (collectively, the "Products"), then that agreement will govern the sale of the Products and these Terms and Conditions of Sale will not apply. In the absence of such an agreement, these Terms and Conditions of Sale will govern Aukua's sale of the Products to the exclusion of any Buyer terms and conditions.

1. **Sale Agreement.** The attached sales document, these Terms and Conditions of Sale, the Aukua End-User Software License Agreement that accompanies the Products (the "EULA"), the Aukua Limited Ninety (90) Day Warranty that accompanies the Products (the "Limited Warranty"), and the Aukua Buyer Support Services Agreement that accompanies the Products (the "Support Agreement") are collectively referred to herein as the "Sale Agreement." The Sale Agreement constitutes the sole and entire agreement between Aukua and Buyer regarding the sale of the Products, and supersedes all prior and contemporaneous communication and agreements regarding same, all of which are merged herein. If any prior or contemporaneous communication from Buyer includes any terms or conditions that are in addition to or inconsistent with those contained in the Sale Agreement, the Sale Agreement will constitute a counter offer.

2. **Acceptance.** Buyer's acceptance of the Sale Agreement is expressly limited to the terms set forth in the Sale Agreement. Aukua hereby objects to and rejects any

terms or conditions in any communication from Buyer that are in addition to or inconsistent with those contained in the Sale Agreement ("Other Terms"), and no act or omission by Aukua (with the sole exception of an Aukua officer signing a written agreement) shall be deemed to constitute Aukua's acceptance of any Other Terms. The Sale Agreement will be deemed accepted by Buyer as the sole and entire agreement regarding the sale of the Products upon the earlier of: (i) Buyer's issuance of an order for the Products after Buyer's receipt of these Terms and Conditions; (ii) Buyer's failure to reject any of the Products within 10 days following Buyer's receipt thereof; or (iii) Buyer's use of any of the Products.

3. **Purchase and Sale.** Buyer hereby agrees to purchase, and Aukua hereby agrees to sell, the Products under the terms and conditions set forth in the Sale Agreement.

4. **Price and Taxes.** Prices for the Products are as set forth in the attached sales document. Product prices do not include any transportation charges, taxes, tariffs, or duties. Such additional amounts may be listed on the Aukua invoice as separate items. Buyer agrees to pay the amounts specified in the attached sales document as well as all applicable transportation charges, taxes (including but not limited to any use, sales, excise, and/or property taxes), tariffs, and duties.

5. **Payment Terms.** Buyer shall make all payments due to Aukua hereunder by check or wire transfer within 30 days after the date on which the corresponding Products are first shipped. Buyer shall make all such payments in the currency specified by Aukua. If, in Aukua's opinion, Buyer's financial condition is or becomes impaired or unsatisfactory or inadequate to meet Buyer's obligations under these Terms and Conditions of Sale, Aukua may require an advance cash payment or an irrevocable letter of credit from a U.S. Bank or recognized multinational bank with substantial U.S. presence (in form and substance reasonably satisfactory to Aukua). Aukua will have the right, among other remedies, to suspend further performance under the Sale Agreement and/or other agreements with Buyer in the event Buyer fails to make

any payment when due. Buyer will be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts and/or Aukua's enforcement of the Sale Agreement. If any payment owed to Aukua is not paid when due, it will bear interest from the due date until paid at a rate of two percent (2%) per month (or the maximum rate permitted by applicable law, if less). If Products are delivered to Buyer in the People's Republic of China ("PRC"), Buyer shall obtain all necessary approvals from the relevant PRC governmental authorities, including the State Administration for Foreign Exchange ("SAFE"), in order to ensure prompt payment of all amounts due hereunder. Any costs or expenses associated with obtaining any such approvals shall be borne by Buyer.

6. **Orders and Cancellations.** All Product orders must be in writing. Aukua may reject or cancel a Product order at any time (even after accepting such order), either orally or in writing, without liability. Buyer may cancel a Product order not less than 10 days prior to Aukua's scheduled shipment date without liability by giving written notice to Aukua, provided that Buyer may not cancel orders for Buyer support services or customized (or custom configured) Products without Aukua's consent. Aukua may, in its sole discretion, allow Buyer to cancel Product orders less than 10 days prior to Aukua's scheduled shipment date, in which case Aukua may assess a restocking fee equal to 15% of the cancelled Product's prices. Except as expressly set forth in this section, Buyer may not cancel a Product order.

7. **Packing and Shipment.** All Products shall be packed, if appropriate, for shipment and storage in accordance with standard commercial practices. Except as otherwise expressly stated in the attached sales document, all shipments shall be FCA (Incoterms 2010), Aukua's shipping point, and Aukua may, at its option, select the common carrier or use the carrier recommended by the Buyer (with the understanding that any carrier selected or used by Aukua is not an agent of Aukua). Risk of loss and/or damage, and title, to the Products will pass from Aukua to Buyer upon delivery to the carrier.



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Notwithstanding the foregoing, all software and related documentation provided by Aukua hereunder (collectively, "Software") is licensed per Section 8 below, and title to such items will not pass to Buyer. When Software is delivered electronically, such delivery will be deemed to have occurred when (i) Aukua has notified Buyer of, and has given Buyer access to, a website from where the Software can be downloaded, and (ii) Aukua has given Buyer any and all license key(s) needed to download, install, and/or activate the Software. All Product delivery dates are approximate and not guaranteed, and Aukua will have no liability for any late delivery or non-delivery. Aukua reserves the right to make partial shipments. Aukua, at its option, will not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of any Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Aukua for all storage costs and other additional expenses resulting therefrom.

8. Software. Buyer acknowledges and agrees that all Software obtained by Buyer from Aukua is proprietary to Aukua and/or one or more of its licensors, and is subject to copyrights owned by Aukua and/or one or more of its licensors. All Software is licensed and not sold, and any reference to the "purchase" or "sale" of Software signifies only the purchase/sale of a license to use that Software pursuant to the terms of the EULA. A copy of the EULA is available at https://www.aukua.com/docs/legal/customer_terms_and_conditions.html or upon request. Buyer agrees to be bound by all of the terms of the EULA, and agrees that it will acquire no rights with respect to Software other than the right to use it pursuant to the terms of the EULA.

9. Limited Warranty. All Products (other than third party Products listed separately on the attached sales document) are provided subject to the provisions of the Limited Warranty. A copy of the Limited Warranty is available at https://www.aukua.com/docs/legal/customer_terms_and_conditions.html. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS

OTHERWISE EXPRESSLY STATED IN THE LIMITED WARRANTY, ALL PRODUCTS ARE PROVIDED TO BUYER "AS IS," AND AUKUA DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ALL IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. The foregoing limitations shall apply even if the above-stated warranty fails of its essential purpose.

10. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL Aukua BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, REPUDIATION OF CONTRACT, NEGLIGENCE, OR OTHERWISE), IN ANY WAY ARISING OUT OF OR RELATED TO THE SALE AGREEMENT, THE PRODUCTS, AND/OR USE OF THE PRODUCTS, EVEN IF AUKUA HAS BEEN ADVISED OF OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL AUKUA'S MAXIMUM, AGGREGATE LIABILITY IN CONNECTION WITH THE SALE AGREEMENT, THE PRODUCTS, AND/OR ANY USE OF THE PRODUCTS EXCEED THE MONEY PAID TO AUKUA FOR THE PRODUCTS GIVING RISE TO THE LIABILITY DURING THE ONE (1) YEAR PERIOD PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM(S). The essential purpose of this

provision is to limit the potential liability of Aukua arising out of the sale of Products to Buyer whether for breach of contract, negligence, or otherwise. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

11. Indemnification. Buyer agrees to indemnify and hold harmless Aukua and its officers, directors, employees, and agents from and against all suits, actions, claims, losses, judgments, damages, costs, and expenses (including reasonable attorneys' fees) arising in connection with Buyer's performance under the Sale Agreement or with respect to the use of any Product, except for those matters as to which Aukua bears sole responsibility as specifically provided herein. Aukua will defend at its own expense any third party claim against Buyer that the Products infringe any valid United States patent, copyright, or trade secret, and will indemnify Buyer against all damages and costs awarded in connection with such claim. If such a claim is made or appears possible, Aukua may, at its option, (i) secure for Buyer the right to continue to use the Products, (ii) modify or replace the Products so they are non-infringing, or, if neither of the foregoing options is available in Aukua's judgment, (iii) require Buyer to return the Products for a credit equal to the portion of previously paid fees amortized over a three-year useful life. However, Aukua has no obligation for any claim of infringement based on modifications of the Products not made by Aukua, Aukua's compliance with Buyer's designs, specifications, or instructions, or the combination, operation, or use of any Product with any product, data, or apparatus not provided by Aukua, in each case to the extent the Products would not otherwise infringe. THIS STATES AUKUA'S ENTIRE OBLIGATION TO BUYER AND BUYER'S SOLE REMEDY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT. A party's obligations to indemnify under this Section 11 shall be subject to such party's prompt receipt of written notice of the claim or lawsuit, all relevant available information requested, reasonable assistance, and sole authority to defend or settle such claim or lawsuit.



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12. Export Requirements. Buyer shall not export, re-export, or transfer, directly or indirectly, any Product, item, or technical data received from Aukua to Cuba, North Korea, Iran, Sudan, or Syria, or to any other country or user to which such export, re-export, or transfer is restricted by the laws or regulations of any country, without first obtaining all required governmental licenses, authorizations, certifications, and approvals. Prior to any export, re-export, or transfer to a foreign end user or foreign country, Buyer shall consult with Aukua to determine if export authorization is required for that end user or destination. Buyer agrees that authorization is required for such exports, re-exports, and transfers unless Aukua represents to Buyer in writing that no such authorization is required. Failure of Aukua to respond to any such inquiry shall not be taken as a representation by Aukua that no such governmental approval is required. Aukua shall be under no obligation to respond to such inquiries from Buyer, or to respond to such inquiries in any particular timeframe. Aukua may, in its sole discretion, require Buyer to provide an end user certificate and/or an export license prior to Aukua's delivery of any Product or item to Buyer. Buyer shall hold harmless and indemnify Aukua for any damages resulting from a breach of this paragraph by Buyer.
13. Foreign Corrupt Practices Act. In conformity with the United States Foreign Corrupt Practices Act ("FCPA") and with Aukua's established corporate policies regarding foreign business practices, Buyer and its employees and agents shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of the United States Government or any other government (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist Buyer or Aukua in obtaining, retaining, or directing any such business.
14. Buyer Support Services. All Products (other than third party Products listed separately on the attached sales

document) are provided with one year of Buyer support services at the "standard" level. Buyer acknowledges and agrees that such Buyer support services provided by Aukua are subject to and being provided in accordance with the terms of the Support Agreement. A copy of the Support Agreement is available at https://www.aukua.com/docs/legal/customer_terms_and_conditions.html or upon request. Buyer agrees to be bound by all of the terms of the Support Agreement.

15. Miscellaneous.

(a) Failure by Aukua to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.

(b) In the event that any provision of the Sale Agreement is held by a court of law or other government agency to be void or unenforceable, the remaining portions of the Sale Agreement will remain in full force and effect.

(c) Buyer may not assign the Sale Agreement in whole or in part without Aukua's prior written consent, and any such purported assignment is void and of no effect.

(d) No U.S. Government Procurement Regulations required to be included hereunder shall be binding on either party unless specifically agreed to in writing prior to incorporation herein.

(e) Aukua shall have the right to make substitutions and modifications to the specifications and functionality of Products provided that overall Product performance is not materially affected in form, fit, or function.

(f) Nonperformance of either party, except for the obligation to make any payments of money, shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the nonperforming party.

(g) The agreement between Buyer and Aukua with respect to the matters described herein and all matters

related to the sale and/or license of Products and/or services by Aukua to Buyer shall be in all respects governed by the laws of the State of Texas without regard to the conflicts of laws provisions thereof. The parties hereby agree that any dispute relating to the Products sold hereunder shall be subject to the exclusive jurisdiction of the federal and state courts in Texas in the districts which include Austin, Texas, and the parties agree to the personal and exclusive jurisdiction of these courts. The parties disclaim the United Nations Convention on Contracts for the International Sale of Goods, which shall not apply to this agreement or the parties' performance hereunder.

(h) The terms and conditions set forth in the Sale Agreement shall constitute the entire agreement between Aukua and Buyer with respect to the matters described herein and all related matters, and shall not be qualified or interpreted by any trade usage or prior course of dealing unless expressly authorized in writing by Aukua. The Sale Agreement may only be amended by a written agreement signed by both parties.

(i) Any warranties, indemnification (including for patent and copyright infringement), and Buyer support services for third party Products sold separately by Aukua are provided by the relevant third party and Aukua shall not have any responsibility or obligations with respect to any such warranties, indemnification, and/or Buyer support services for such third party Products.

(j) In the event of any inconsistency between these Terms and Conditions of Sale and any other document that constitutes part of the Sale Agreement, these Terms and Conditions will control.

(k) All information provided by Aukua in connection with any Product roadmap presentation is for informational purposes only, is not binding on Aukua, and does not constitute part of this Sale Agreement. Such information reflects Aukua's present plans and is subject to change by Aukua at any time and without notice.