

Terms and Conditions

Sale of Category 2 Commercial Software Products

- 1 **DEFINITIONS.** AS USED THROUGHOUT THESE TERMS AND CONDITIONS, THE FOLLOWING TERMS SHALL HAVE THE MEANINGS AS SET FORTH BELOW:
 - a. "Seller" means, NV5 Geospatial Solutions, Inc., operating in the State of Colorado.
 - b. "Buyer" means the person, firm, corporation or academic institution that is purchasing Seller's product(s).
 - c. "Software" shall mean computer programs provided to Buyer as a licensee by an approved source, and any upgrades, updates, bug fixes or modified versions thereto (collectively "Upgrades") if provided.
 - d. **"EULA" means Seller's End User License Agreement which governs the use of the Software. Contact your sales representative for a copy or you may find a copy at <http://www.nv5geospatialsoftware.com/Company/Legal/EULA.aspx>.**
 - e. "Software Documentation" means written information (whether contained in user or technical manuals, training manuals, specifications or otherwise) pertaining to the Software and made available by Seller in any manner (including CD-ROM or on-line).
 - f. The Software, related Software Maintenance Products, and Software Documentation offered for sale qualify as "commercial items" as that term is defined in the Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Suppl. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause into which this sale may be incorporated, the end user, whether that be commercial or Government, will acquire the Software and Software Documentation with only those rights set forth in the EULA. Use of either a) the Software and any of its Software Maintenance Products, or b), Software Documentation, or both, constitutes agreement by the end user (either commercial or Government) that the Software and Software Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.
- 2 **ACCEPTANCE OF CONTRACT.** Seller's acceptance of any purchase order issued by Buyer shall be expressly limited to the terms and conditions set forth herein. Any additional or different terms set forth or referenced in Buyer's purchase order that conflict with these terms and conditions are hereby objected to by Seller and shall not be deemed a part of any resulting order. These terms and conditions represent the entire agreement between the Buyer and Seller pertaining to the subject matter of this order and shall supersede all prior oral and written agreements, proposals, communications and documents.**3 APPLICABLE LAW.** The validity, performance, and construction of the contract arising from the acceptance of this offer by commercial entities shall be governed as follows:

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- a. For commercial entities, the laws of the State of Colorado without regard to its choice of law rules.
- b. For US state and local governments and/or higher education schools governed by state laws, contracts shall be governed by the laws of the state in which they are located without reference to conflict of laws principles.
- c. For the US government, contracts shall be governed by US Federal Laws. d. U.S. Federal Laws shall govern all matters of intellectual property.
- d. Contracts will not be governed by the United Nations Convention on Contracts for the international Sale of Goods, the application of which is expressly excluded.

- 4 ASSIGNMENT.** Neither Seller nor Buyer shall assign any rights or obligations hereunder without the prior express written consent of the other party, except to a third party pursuant to a merger, sale of all or substantially all assets, or other corporate reorganization.
- 5 AUDIT.** Notwithstanding any language or provisions in this contract to the contrary, Buyer shall not be allowed the right to audit or examine Seller's books and records unless required by applicable law.
- 6 CHANGES.** No changes, extras or other work shall be authorized unless agreed to by both parties as evidenced by a written amendment to this order signed by duly authorized representatives of Buyer and Seller.
- 7 TITLE AND RISK OF LOSS.** Risk of loss shall pass to Buyer upon delivery of the Software, and/or Software Documentation. It is hereby acknowledged and agreed that Buyer shall not obtain title to the Software. In lieu thereof, Buyer shall obtain the license rights granted in the EULA or Software License Agreement.
- 8 PAYMENT.** Buyer shall pay for all products within thirty (30) days from (a) the date products are shipped, or (b) date of the invoice, whichever is sooner. Payment will be deemed to have been made when received at Seller's facilities or when electronically deposited at Seller's designated financial institution.
- 9 TAXES.** As may be applicable by law, any and all taxes, assessments, or duties, which may be imposed upon the production shipment, installation, or sale of the products covered hereby, shall be the sole responsibility of and shall be paid by Buyer.
- 10 OPEN SOURCE SOFTWARE.** Certain software libraries and other third party software included in the Software are "free" or "open source" software and are subject to separate license terms ("Open Source Software"). Such Open Source Software is distributed WITHOUT ANY WARRANTY, without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. Certain Open Source Software has been or may be made available by Seller with the Software or on its web site. Seller is not obligated to provide any warranty, maintenance, technical or other support for the Open Source Software or its use on the Software.

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- 11 INDEMNITY.** Seller shall defend or settle at its expense a claim or suit against Buyer arising out of or in connection with an assertion that the Software infringes any U.S. copyright or U.S. registered patent. Seller shall indemnify and hold Buyer harmless from and against the damages, costs and expenses (including, without limitation, reasonable legal and expert witness fees), if any, finally awarded in such suit or the amount of the settlement thereof, provided that Seller is notified in writing of the existence of such claim by Buyer within five (5) business days of Buyer's first learning of the same, and provided that Seller is given full authority to control the defense, cost and settlement of the claim. Seller will not be obligated to defend or otherwise indemnify Buyer in any lawsuit or as to any claim which arises from or relates to: (1) any combination of the Software with another product not supplied by Seller; (2) if such a claim is based upon use of the Software for purposes for which it was not designed; or (3) if the Software has been modified by any party other than Seller. In lieu of the foregoing indemnification obligations, Seller shall have the option, at its expense, either to procure for Buyer the right to continue using the Software or to replace or modify the Software so that it becomes non-infringing, or to refund to Buyer the amount actually paid by the Buyer for the Software.
- 12 EXPORT RESTRICTIONS.** The Software is subject to U.S. export controls and may be subject to additional export and import regulations of the country in which the Software is obtained. Buyer agrees that it will not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. Buyer agrees that it will comply with all applicable laws and regulations governing the export, import, reexport, transfer and use, and that it has the responsibility to obtain any required authorization from the appropriate authority. If Seller receives notice that Buyer is or Buyer becomes identified as a sanctioned or restricted party under applicable law, Seller will not be obligated to perform any of its obligations if such performance would result in violation of the sanctions or restrictions. See <http://www.nv5geospatialsoftware.com/Company/Legal.aspx> for further details on export controls on Seller's software products.
- 13 ORDER OF PRECEDENCE.** IN THE EVENT OF CONFLICT IN ANY TERM OF ANY DOCUMENT THAT GOVERNS THIS PURCHASE, THE FOLLOWING ORDER OF PRECEDENCE WILL APPLY IN DESCENDING ORDER OF CONTROL: EULA, THESE TERMS AND CONDITIONS, PURCHASE ORDER, UNLESS AGREED TO IN WRITING BY BOTH PARTIES.
- 14 TERMINATION.** Buyer may terminate any purchase order by giving Seller 10 days' written notice or by returning the Software unopened. Seller will then provide credit or reimbursement to Buyer as solely determined by the Seller.
- 15 GENERAL PROVISIONS.** The English version of these Terms and Conditions and the EULA will be the version used for any required interpretation.