

**TERMS AND CONDITIONS FOR SALE OF COMMERCIAL SOFTWARE PRODUCTS (“Terms and Conditions”)**

- 1 DEFINITIONS.** AS USED THROUGHOUT THESE TERMS AND CONDITIONS, THE FOLLOWING TERMS SHALL HAVE THE MEANINGS AS SET FORTH BELOW:
- a. “Seller” means, Exelis Visual Information 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”) during the first year of purchase of the software.
  - d. “EULA” means Seller’s End User License Agreement which governs the use of the Software. The EULA may be viewed at [www.exelisvis.com](http://www.exelisvis.com) or contact your sales representative for a copy of the EULA.
  - e. “Software Maintenance Products” shall mean follow-on, license renewal, term limited, technical support, any upgrades, bug fixes or modified versions to the delivered software separately agreed to by the Seller and Buyer following the initial year of sale of the original software product. The Software Maintenance Program may be viewed at <http://www.exelisvis.com/language/en-US/Support/SoftwareMaintenance.aspx>, or contact your sales representative for a copy.
  - f. “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).
  - g. 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 and any others expressly set forth or referenced in Seller’s acknowledgment form. Any additional or different terms set forth or referenced in Buyer’s purchase order 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. Buyer’s purchase order shall be deemed accepted only after Seller’s written acknowledgment form is executed by an authorized official of Seller and shall not be construed to be accepted by any other action of Seller including, but not limited to commencement of performance or delivery. Further, downloading, installing or using the software license constitutes acceptance of the Buyer of both the EULA and this sale.
- 3 APPLICABLE LAW.** The validity, performance, and construction of the contract arising from the acceptance of this offer shall be governed by the laws of the State of Colorado without regard to its choice of law rules and will not be governed by the United Nations Convention on Contracts for the internal 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.** Title and risk of losses shall pass to Buyer upon delivery of the Software, and/or Software Documentation.
- 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.** 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 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.
- 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 and Software Documentation are subject to the controls of U.S. export controls, including but not limited to the U.S. Export Administration Regulations. Buyer agrees that the Software and Software Documentation will not be shipped, transferred or exported into any country, or used in any manner prohibited by U.S. export restrictions or controls or any other applicable export laws, restrictions and regulations (collectively "Export Laws"). In addition, if the Software or Software Documentation is identified as an export controlled item under Export Laws, Buyer represents and warrants that Buyer and Buyer's end users are not citizen of, or located within, an embargoed or otherwise restricted nation (including without limitation Iran, Cuba, Syria, Sudan and North Korea) and that Buyer and Buyer's end users are not otherwise prohibited under the Export Laws from receiving the Software.
- 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 day's 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 interpreting.