



These Terms and Conditions apply to all goods and/or services (“Products”) sold and/or performed by Smarteye Corporation (“Smarteye”) and are incorporated into each and every quotation, acknowledgement, or other document issued by Smarteye. By purchasing Products from Smarteye, Customer indicates that it has read, understands, and agrees to be bound by these Terms and Conditions without modification.

1. OFFER; ACCEPTANCE; CONTRACT

Smarteye’s quotation or other offer document, together with these Terms and Conditions (“Quotation”) constitutes Smarteye’s offer to the purchaser identified in the Quotation (“Customer”) to sell the Products identified in the Quotation and otherwise to enter into the agreement the Quotation describes and the Quotation shall be the complete and exclusive statement of such offer and agreement (“Contract”). The Contract is formed when Customer accepts the Quotation by written acknowledgement or by the issuance to Smarteye of a purchase order or other document for the purchase of the Products (“Purchase Order”). Acceptance is expressly limited to these Terms and Conditions and the terms and conditions expressly referenced on the face of the Quotation. Any terms and conditions that purport to modify, supersede, supplement or otherwise alter these Terms and Conditions, whether contained in Customer’s Purchase Order or otherwise, are not binding on Smarteye and shall be deemed rejected and replaced by these Terms and Conditions. Notwithstanding any contrary provision in Customer’s Purchase Order, neither Smarteye’s failure to object to Customer’s terms and conditions, nor Smarteye’s delivery of Products, commencement of performance, or any other conduct in furtherance of Smarteye’s supply of the Products to Customer shall constitute acceptance of Customer’s terms and conditions. Unless otherwise expressly stated in the Quotation, the Quotation is valid for a period of sixty (60) days after it is issued by Smarteye. Where a Quotation and Purchase Order is not issued as described above, Smarteye’s order acknowledgement or other confirmation document, together with these Terms and Conditions, shall be the complete and exclusive statement of the Contract described herein.

2. PRICES AND PAYMENT TERMS

Unless otherwise expressly stated in the Quotation, payment terms are net thirty (30) days from date of invoice. Invoices will be issued monthly for the Products supplied by Smarteye during the previous month. Prices are in U.S. dollars and do not include any storage, shipping, handling, insurance, taxes, duties, or tariffs. Credit shall be subject to Smarteye’s approval and if Customer defaults under its payment terms, Smarteye may cancel all credit available to Customer. Customer shall not setoff against or recoup from any invoiced amounts due or to become due from Customer or its affiliates any amounts due or to become due from Smarteye.

3. DELAY OF PAYMENTS

Payments which extend beyond thirty (30) days from date of invoice will be subject to a finance charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, in addition to the principal.



4. WARRANTY

These Terms and Conditions incorporate by reference Smarteye's standard Warranty, a copy of which is attached as Appendix A.

5. CONFIDENTIALITY

Customer shall maintain the confidentiality of all technical, business, and financial information of Smarteye and shall not disclose it to third parties without the written consent of Smarteye except to the extent required by law or as necessary to carry out the purpose of the Contract. Upon termination of the Contract, Customer shall return such confidential information and shall not use such confidential information for its own, or any third party's, benefit.

6. CANCELLATION AND TERMINATION

Upon cancellation of all or a portion of a Contract by Customer, the Customer becomes liable for payment of reasonable cancellation charges which shall take into account expenses already incurred and commitments made by Smarteye relating to the subject order.

No termination of the Contract, by the Customer nor Smarteye shall be effective, except where the other party materially defaults in any of its obligations under the Contract and fails to cure such default within forty five (45) days after receipt of a written notice specifying such default.

7. PROPRIETARY MATERIALS

Smarteye shall have and retain all rights, title, and interest, including all intellectual property rights, in and to all Products, software, and associated materials and all related reports, specifications, drawings, designs, and other property, tangible or intangible, furnished or created by Smarteye in connection with or under the Contract, including, but not limited to, all copyrightable works of original authorship (including computer programs, technical specifications, and manuals), ideas, inventions (whether patentable or not), "know-how," processes, compilations of information, trademarks, and other intellectual property, and all derivative works thereof ("Proprietary Materials"). No Proprietary Materials created by Smarteye in connection with or pursuant to the Contract shall be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act. Customer shall not have any license to use any intellectual property rights of Smarteye except to the extent expressly set forth in Section 8 (License) below.

8. LICENSE

Subject to Customer's compliance with the terms of the Contract, Smarteye grants Customer a non-transferable, non-exclusive, single-site license to use all software and related information furnished by Smarteye to Customer as part of or in connection with the Products under the Contract in executable machine-readable form only and solely for its internal business operations and the purposes described in the Contract. The software is licensed, not sold. Smarteye is the owner of all intellectual property rights in and to the software and title to and ownership of all software and



related information shall at all times remain with Smarteye.

All rights not expressly granted to Customer in the Contract are reserved by Smarteye, and Customer may not use the software in any manner not expressly authorized by the Contract. Customer shall not: remove or destroy any proprietary rights marks or legends on or in the software; modify, enhance, adapt, translate, or create derivative works of the software; transfer, distribute, assign, sublicense, rent, lease, export or sell the software; decompile, disassemble, or reverse engineer the software; use the software for service bureau services; or make copies of the software other than for archival and backup purposes.

9. DELIVERY

Delivery of Products will be EXW Smarteye's facility in Rochester Hills, Michigan (Incoterms 2010) unless otherwise expressly stated in the Quotation. Smarteye may, at Customer's request and expense, arrange carriage for Products on behalf of Customer, but risk of damage to or loss of Products shall still pass to Customer in accordance with the agreed delivery terms.

Scheduled or stipulated shipping dates are approximate and based upon prompt receipt of all necessary information from Customer. Premium shipping expenses and other related expenses necessary to meet Customer's accelerated delivery schedules shall be the responsibility of Customer.

10. FORCE MAJEURE

Smarteye shall not be liable for any loss, cost, damage, failure to perform, or delay in performance due to acts of God, acts of Customer, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, delays in transportation, embargoes, power failures, any law, order, or requirement of any governmental agency or authority, or any other events or causes beyond Smarteye's reasonable control, whether similar or dissimilar to any of the foregoing. In the event of such delay or failure, Smarteye shall not be in breach of the Contract and all of Smarteye's obligations under the Contract shall be suspended and extended for as long as the event or cause prevails. Smarteye may allocate supply in any manner it deems fair and reasonable in its sole discretion.

11. PRODUCT AND PROJECT CHANGES

Smarteye reserves the right to equitably adjust the price and delivery terms of the Contract in the event of, and as a condition to, any changes in the functionality, specifications, timing, or other requirements for Products, the volume of Products, or the scope of the project (including for additional work), as requested by the Customer. All services provided by Smarteye for any changes will be billed at the service billing rates described in the pricing section(s) of the Quotation.

12. ASSIGNMENT

The Contract may not be assigned in whole or in part by either party without the prior written consent of the other party.



13. LIMITATION OF LIABILITY

Under no circumstances shall Smarteye be liable for any indirect, special, exemplary, incidental, punitive, or consequential damages, including but not limited to loss of anticipated profits, loss of use, loss of revenue, cost of capital, or other economic loss, in connection with or arising from the Products or the Contract. In no event shall Smarteye's liability arising out of or resulting from the Contract, including, without limitation, for the manufacture, delivery, sale, repair, replacement, installation or use of any Product, exceed the amounts actually paid by Customer for the Products that are alleged to be defective or nonconforming or the cause of any loss or damage, whether founded in contract, tort (including negligence), strict liability, or otherwise. No action shall be brought by Customer against Smarteye arising out of or relating to the Contract or any Products more than one (1) year after accrual of the cause of action therefore. Except as expressly set forth in the Contract, Smarteye will not have any indemnification, hold harmless, or defense obligations with respect to the Products. **SMARTEYE SPECIFICALLY, BUT NOT BY WAY OF LIMITATION, DISCLAIMS ANY AND ALL LIABILITY FOR THE USE OR PERFORMANCE OF THE PRODUCTS IN THE APPLICATION(S) OR SYSTEM(S) SELECTED BY CUSTOMER AND FOR ANY INCORRECT OUTPUT PROVIDED BY THE PRODUCTS TO SUCH APPLICATION(S) OR SYSTEM(S). CUSTOMER IS SOLELY RESPONSIBLE FOR ITS APPLICATION(S) AND SYSTEM(S) AND VERIFYING ANY OUTPUT PROVIDED BY THE PRODUCTS TO SUCH APPLICATION(S) OR SYSTEM(S).**

14. SMARTEYE'S PROPERTY

Unless otherwise expressly stated in the Quotation, all facilities, materials, components, tooling, molds, jigs, dies, patterns, fixtures, equipment, and related items used in the manufacture of Products shall be and remain the property of Smarteye. Customer shall not have any rights in or to any of Smarteye's property, including, without limitation, any option to purchase such property.

15. COMPLIANCE

Customer shall be solely responsible for compliance with any federal, state, local, or foreign laws, rules regulations, and ordinances or any industry standards that may be applicable to the Products. Smarteye has no obligation to furnish or obtain any export or import license or similar authorization and is not in any way responsible for the issuance or continuance in force of any such license or authorization. Customer shall not export from the United States any Products except as authorized by law.

16. AUDITS

No on-site audits are to be conducted by Customer on Smarteye premises unless agreed to by Smarteye.

17. SERVICE AND REPLACEMENT PARTS

Unless otherwise expressly stated in the Quotation, Smarteye shall not have any liability or obligation to fulfill Customer's requirements for service and replacement parts.



18. WAIVER

Waiver by Smarteye of any of the terms or conditions of the Contract shall be effective only if in writing and signed by Smarteye, and shall not constitute a waiver of such terms as to any subsequent events or conditions, whether similar or dissimilar. No course of dealing or custom in the trade shall constitute a modification or waiver by Smarteye of any right.

19. SEVERABILITY

If any provision of these Terms and Conditions is found invalid or unenforceable by a court of competent jurisdiction, it shall be deemed modified so as to make it valid and enforceable in light of the intent of the parties expressed in that provision.

20. SURVIVAL

These Terms and Conditions shall survive and continue in full force and effect following the expiration, cancellation or termination of any Contract.

21. ENTIRE AGREEMENT; MODIFICATION

Terms and Conditions and any other terms and conditions, attachments, exhibits or supplements expressly referenced on the face of the Quotation, constitute the entire agreement and Contract between Smarteye and Customer with respect to the matters contained herein and therein and supersede all prior oral or written representations and agreements. Except as otherwise provided in these Terms and Conditions, the Contract may only be modified by a written agreement signed by Smarteye.

22. GOVERNING LAW; JURISDICTION; VENUE

Each Contract and any other documentation between Smarteye and Customer for the Products shall be governed by the internal laws of the State of Michigan without regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded. Customer consents to the exclusive jurisdiction of the Courts of the State of Michigan and the United States District Court for the Eastern District of Michigan for any action or proceeding arising out of, or in connection with, each Contract and any other documentation between Smarteye and Customer for the Products. Customer specifically waives any and all objections to venue in such courts.



APPENDIX A

SMARTEYE LIMITED WARRANTY

The following Warranty applies to Smarteye Corporation (“Smarteye”) products sold by Smarteye and purchased for Customer’s use, and not for resale.

1. WARRANTY

Smarteye warrants that during the warranty period the Products will be free from defects in material and workmanship.

2. WARRANTY PERIOD

Smarteye shall provide labor and material for warranty repairs for a period of one (1) year from the date of shipment of all Products supplied under the Contract.

3. THIRD PARTY PRODUCTS AND PARTS

UNLESS OTHERWISE EXPRESSLY STATED IN THE QUOTATION, PRODUCTS AND PARTS SUPPLIED UNDER THE CONTRACT THAT HAVE BEEN PURCHASED BY SMARTEYE FROM THIRD PARTY MANUFACTURERS SHALL ONLY HAVE THE WARRANTY OFFERED BY THE MANUFACTURER THEREOF AND SMARTEYE MAKES NO WARRANTY, EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

4. REMEDIES

Should any Product defect or nonconformance appear during the warranty period, as Customer’s sole and exclusive remedy, Smarteye shall, upon prompt notice by the Customer and verification of the defect or nonconformance by Smarteye, correct such nonconformity at its option, by repair or replacement of the nonconforming Product or parts thereof. Customer is responsible (solely at its cost) for all freight and transport to send a nonconforming Product to, and pick it up from, Smarteye’s designated repair facility, as directed by Smarteye.

5. SERVICES OUTSIDE OF WARRANTY

An invoice will be issued to Customer by Smarteye in accordance with the applicable rates for parts and services which (i) fall in the general category of normal maintenance, (ii) are needed to make additions or modifications requested by the Customer and not originally contracted for, or (iii) are required to make repairs not covered by this warranty, including but not limited to damages caused by accident, misuse, neglect, alteration, improper storage, installation or maintenance, unauthorized repair, or customer programming problems.



6. MISCELLANEOUS

Repair parts and fixes outside the initial warranty are warranted by Smarteye for a period of ninety (90) days from the date of repair, provided however, that repairs or replacements to original Products shall not renew or extend the warranty period of such Products. Replaced Products become the property of Smarteye.

7. EXCLUSIONS

The foregoing warranty does not apply to Products that are in any way changed by Customer or any third party from the Products delivered by Smarteye, are damaged or cause damage as a result of misuse, accident, neglect, or improper installation, alterations, or repairs on the part of Customer or any third party, or are not made available for inspection and testing by Smarteye.

8. GENERAL

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES WITH RESPECT TO THE PRODUCTS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. SMARTEYE DOES NOT WARRANT THAT ANY PRODUCT WILL BE ERROR-FREE.