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Abstract

The following outlines the Terms and Conditions for working with Sequoia.

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REVIEWED BY	Kenneth LeBay	[ReviewerDate]	[RevReviewer]	1/1/1900	Title: Terms and Conditions Champion: William Lambert	
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Revisions

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1 Definitions

Seller is Sequoia Applied Solutions, Inc.; Purchaser is the recipient of the attached Proposal; Project (or Goods or Services) is defined as the products and services described in the attached Proposal; Contract (or Order or Purchase Order or PO or Agreement) is the agreement between the Seller and Purchaser to perform the Project, which unless expressly agreed to by an executive officer of the Seller, will be governed by these Terms and Conditions.

2 Controlling Terms and Conditions

By placing an Order with Seller for this Project, Purchaser agrees to be bound by these Terms to the exclusion of any other terms or conditions not accepted by Seller in writing. This includes but is not limited to any pre-printed terms or conditions on Purchaser's Purchase Order or any purported nullification of these Terms by way of any Purchase Order, or Order communication, in any form. Purchaser acknowledges that it has been advised that no agent, employee or representative of Seller has any authority to bind Seller to any promise, representation, or warranty concerning any of the Goods or Services and, unless such affirmation, promise, representation, or warranty is specifically set forth in the Proposal or these Terms and Conditions, it does not form a basis of this bargain and shall not be enforceable against Seller. These Terms and Conditions shall apply to all Contracts between Seller and Purchaser, even if these Terms and Conditions are not specifically referenced in the Proposal or other contract documents related to future projects.

3 Payment Schedule

Unless otherwise noted in the Proposal, 30% of the contract price will be billed upon receipt of PO. Time and Material projects will be billed weekly based on hours worked, expenses incurred and materials received. Down Payments are due upon receipt; all other payments are due Net-30 days. All payments thirty days in arrears will be subject to a finance charge of 1.5% per month on the outstanding balance. Purchaser shall reimburse Seller for all costs of enforcing the Contract, including court costs and attorney fees.

4 Acceptance

For the purpose of establishing the start of the warranty period, acceptance of work shall occur on the earliest of the following events:

- a) The date of first use by the Purchaser or the first use for the benefit of the Purchaser, whether such use is partial or complete;
- b) The date of completion of start-up or commissioning;

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c) Thirty (30) days after Seller has delivered to the Purchaser the system or the results of the services performed by Seller, or the date on which Seller is caused to stop work for any reason beyond Seller's control.

The Seller shall be deemed to have fulfilled its agreement and Warranty period shall commence if Purchaser acknowledges in writing acceptance of the equipment (or services) or any one of the preceding conditions is met. If Seller's resources are held on standby while the Purchaser is running production or maintaining equipment, Seller shall bill those resources at the Seller's onsite engineering rates plus travel and expenses as an addition to the quoted price unless such standby services are specifically referenced in writing and included as a cost line item in the Proposal.

5 Warranties

a) Limited Equipment Warranty: The Seller warrants that for a period of one year from acceptance. The engineered system supplied by Seller shall comply with the Seller's written specifications as stated in the Proposal and be free from defects in materials and workmanship, under proper use and service. All parts or products not manufactured directly by the Seller will be covered only under the express warranty of the manufacturer. The warranty does not extend to damage or wear caused by misuse, negligence, accident, corrosion, modification by Purchaser, faulty inspection, loss of product, or tampering in a manner to impair normal operation of the equipment. Service or attempted repair of equipment by persons not authorized by Seller to do that work will void the equipment warranty.

The Seller shall replace, or at its option, repair, any equipment or software found to be defective in material or workmanship within the warranty period. The Seller's warranty obligation is limited to replacement or repair, and in no event shall Seller be liable for special damages, incidental or consequential damages, down time or for transportation, installation, adjustment, or any other expenses that may arise in connection with such equipment or parts. Expendable items are specifically excluded from this warranty.

b) Services Warranty: The standard of care for all services performed or furnished by Seller under this Agreement will be the skill and care used by members of the Seller's same profession practicing under similar circumstances at the same time and the same locality. Seller shall correct any deficient services, at no additional charge to Purchaser, so long as Purchaser gives Seller written notice of that deficiency within one year after completion of those services.

c) No Other Warranties: The forgoing warranties are expressly made in lieu of all other warranties, express or implied, including the warranties of merchantability and fitness for any particular purpose or use (even if Purchaser has notified Seller of its intended use for the equipment or the services provided by Seller). No waiver, modification, or alteration of the forgoing shall be valid unless made in writing and signed by an executive officer of the Seller.

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No PE (professional engineer) stamp or certification shall be provided unless specifically included in the Seller's Proposal and confirmed in the Purchaser's PO.

6 Price Adjustment

If the project is delayed significantly and the delay is beyond Seller's control, Seller reserves the right to adjust the contract amount in order to cover any increased labor and/or material costs. In addition, the Seller limits the amount of onsite engineering time as defined in the proposal. Any additional onsite time, not directly caused by Seller's negligence, will be billed at standard onsite engineering rates plus travel and expenses as an addition to the quoted price. Onsite time including that worked by Seller's subcontractors are limited to 8hr weekdays during normal business hours and is based on a continuous installation schedule unless defined otherwise in the Proposal.

7 Professional Engineering (PE Stamp)

Seller does not have a licensed professional engineer on staff. Seller consults with licensed engineers when required by Purchaser or by applicable law. Purchaser always retains final authority and responsibility for approving product designs and product quality. This approach has the added advantage of providing an unbiased third-party review by an engineer that is a subject-matter expert and that is familiar with local codes and regulations. If a PE Stamp is required Seller may provide such services only as an Option; and, unless such an Option is provided in the Seller's Proposal and accepted by Purchaser no PE services are provided.

8 Changes in Scope/Cancellation/Scheduling Delays

The Order may not be changed or canceled without the written agreement of both parties. Changes to the Order that are considered by the Seller to be beyond the scope of the Proposal will be not be addressed until scope, cost, and schedule impact are formally quoted by Seller in the form of a Proposal or Change Order. Any schedule changes made by Purchaser or beyond Seller's control that affect Seller's manpower scheduling, travel plans, or any other aspect of the project or that lead to inefficiencies on Seller's part may lead to additional costs to be paid by Purchaser. Purchaser agrees to pay any such additional costs as an addition to the PO. The Seller will not be obligated to take actions on the changes until the Purchaser has agreed in writing to the revised scope of work, project schedule and price and payment terms. Due to the frequently dynamic nature of development projects, current timelines and deliverable expectations will be tracked and kept up to date in the Sequoia Dashboard (dashboard2.sqasol.com). Please refer to these dates for all deliverable expectations. Need by dates received on a Purchase Order may not be most current.

9 Limits of Liability

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In no event, regardless of cause, shall Seller assume responsibility for or be liable (a) for penalties or penalty clause of any description, or (b) for indemnification of customer or others for costs, damages, or expenses each arising out of or relating to the goods or services to be provided under this Order or for certification unless otherwise specifically provided herein or (c) for indirect, incidental, special, or consequential damages under any circumstances. Sellers' maximum liability, including direct damages, shall not exceed the amount paid by Purchaser on the project out of which the damages arise. This limitation of Seller's liability will apply regardless of the form of action, whether in contract or tort, including negligence.

10 Insurance

Risk of loss to the equipment herein specified shall be Purchaser's from time of shipment. Purchaser is responsible for providing and maintaining adequate insurance for the equipment herein specified against loss or damage by fire or other causes between time of shipment and final payment.

The Seller shall arrange for, pay for and maintain in full force and effect, at all times during the performance of supervisory or field engineering work and until final acceptance of that work the following insurance:

- a) Worker's Compensation including Employer's Liability
- b) General Liability

11 Non-Solicitation of Employees

Seller has valuable resources in its personnel and has invested significantly in their hiring and training. In an effort to deter Purchaser from soliciting Seller's employees or sub-contractors, Purchaser agrees to pay to Seller one (1) year salary for any individual Purchaser hires from the Seller during the period starting with the beginning of the first contract between the parties and extending for 2 years after the completion of the last contract between the parties.

12 Intellectual Property

Seller shall retain all right, title and interest in all intellectual property including but not limited to all drawings, specifications, software prepared by the Seller, all copyrights, patents and other intellectual property rights. Purchaser shall only duplicate drawings, specifications, or software that may be supplied by the Seller for Purchaser's internal purposes in regards to the equipment or work supplied for this project only. The Purchaser will not duplicate drawings, specifications, or software for the purposes of rendering services, selling products to third persons, or duplicating to other equipment. The Purchaser shall not reverse engineer, disassemble, decompile, or

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translate the intellectual property. The Purchaser shall not sell, license, assign or transfer the intellectual property to any interest therein to anyone.

13 Software Licensing

All application software provided by Seller is covered under our standard license agreement. Any third-party software provided by Seller will be transferred to Purchaser upon system acceptance and is covered under that third party's licensing agreement.

14 Confidentiality

During the term of the Agreement and for two years afterward, Seller will use reasonable care to prevent the unauthorized use or dissemination of Purchaser's confidential information. Reasonable care means at least the same degree of care Seller uses to protect its own confidential information from unauthorized disclosure but no less than a reasonable degree of care. Purchaser will reciprocate in regards to Seller's confidential information.

Confidential information is limited to information clearly marked as confidential, or disclosed orally and summarized and identified as confidential in a writing delivered within 15 days of disclosure.

Confidential information does not include information that:

- a) Seller knew before Purchaser disclosure;
- b) Is or becomes public knowledge through no fault of Seller;
- c) Seller obtains from sources other than Purchaser who owe no duty of confidentiality to Purchaser;
- d) Seller independently develops.

15 Taxes

All prices shall be subject to the addition of any tax or governmental charge upon the goods or services provided by Seller to the extent that the Seller is or shall be required by law or regulation to collect the same. The amount of such taxes shall be paid to the Seller immediately upon request or, in lieu thereof, a tax exemption certificate, in a form satisfactory to the taxing authority, must be presented to the Seller.

16 Time & Expense (T&E) Projects

To allow the Seller to be able to manage its participation in a T&E project most effectively:

- Purchaser must provide a detailed schedule at least 14 days in advance of any work requested;

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- Onsite work, unless specifically called out otherwise in Seller's Proposal, shall consist of one trip;
- All efforts on including fielding 'support calls' shall be billed in one-hour minimum increments;
- Additional POs or Change Orders applicable to a single T&E Project must be received by Seller at least one week prior to the full utilization of any open POs hours.

17 Travel and Onsite Work

To allow the Seller to be able to manage its participation in the project most effectively:

- Any onsite work quoted as "x days" or "y weeks" or the like shall consist of x or y consecutive days/weeks unless specifically indicated otherwise in Seller's Proposal;
- Onsite work, unless specifically called out otherwise in Seller's Proposal, shall consist of one trip;
- Any work requiring air travel by Seller must be scheduled a minimum of 15 days in advance

18 Staffing

To allow the Seller to be able to manage its participation in the project most effectively, Seller reserves the right to determine the personnel to perform the work. Seller further reserves the right to use sub-contractors as deemed appropriate by Seller.

19 Storage of Materials at Purchaser's Location

Materials stored at Purchaser's Location and/or installation site to be installed by others are to be considered delivered to the Purchaser's care and custody.

20 Purchaser's Obligations

At all times Purchaser is obligated to act in good faith and in proper and appropriate manner including but not limited to working with the Seller to ensure the Seller's product performs as intended; and, if not, to clearly identify areas that require attention. If requested, Seller may require Purchaser to keep a detailed error-log of the system.

21 Purchaser Security Rules/Procedures

Seller and its agents and subcontractors shall comply at all times with Purchaser's security measures, rules and procedures known to Seller, when on Purchaser's premises.

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22 Independent Contractor

Seller is an independent contractor of Purchaser. Seller is not and shall not be considered an agent, servant or employee of Purchaser.

23 Limits of Actions

Any action for breach of this contract must be commenced within one (1) year after the cause of action occurs, and no such action that is not commenced within such period may be maintained, except an action to enforce payment of the purchase price.

24 Dispute Resolution

In the case of a dispute between Purchaser and Seller regarding this Contract, the parties agree to submit the dispute to binding arbitration in Washtenaw County, Michigan. The parties agree that the binding arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court with jurisdiction to do so.

25 Waiver

The failure of a party to claim a breach of any term of this Order shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of that term.

26 Returns

All products and services for this project are sufficiently unique to prohibit any return for full or partial credit, other than warranty service, unless specifically stated otherwise in the Proposal. The Seller is not responsible for loss of or damage to products returned to it, unless notified in advance of the return and the Purchaser is given a Return Authorization Number which is prominently placed upon the shipping documents and packing container.

27 Governing Law

These Terms and Conditions shall be governed by the laws of the State of Michigan, without giving effect to its conflicts of laws principles.

28 Severability

If any of these Terms or part thereof is held to be invalid, illegal, or unenforceable, that term shall be given effect to the fullest possible extent and all other Terms shall remain in full force and effect.

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29 Force Majeure

If the Seller is unable to perform its obligations of the project due to wars, acts of terrorism, riots, acts of governmental authorities, acts of God, civil disturbances, explosions and other such acts Seller shall be excused from performance from the duration of that force majeure event. If that force majeure event continues for more than 30 days, either party may terminate this Agreement, effective upon written notice to the other party and the parties shall thereafter have no liability to each other, with regard to the terminated project, except for the obligation of Purchaser to pay Seller for work performed and goods provided prior to the effective date of termination.

30 International Traffic in Arms Regulations (ITAR)

Seller is a designer and manufacturer of military equipment. As such, for Orders designated as "ITAR" Orders, Seller is required to meet specific quality requirements, military standards, International Traffic in Arms Regulations (ITAR 22 CFR Parts 120-130), and US Federal Executive orders. As a customer to Seller, Purchaser may also be required to comply with certain flow-down requirements. Purchaser shall not use any goods or services provided by Seller in a manner that violates applicable ITAR or other federal laws and regulations.

31 Federal Acquisition Regulation (FAR)

Orders arising out of a contract with the federal government or any subcontract with an entity arising out of a federal government contract must be compliant with the FAR codified at 48 CFR Chapter 1, Subchapters A-H and all other applicable laws and regulations. All Orders subject to the FAR will require an addendum specifying any additional contractual provisions required by the FAR. The addendum shall incorporate all required FAR provisions into the Order and all resulting purchase and supply agreements arising out of that Order.

32 Export Laws

The Goods and/or services may be subject to US Government export laws and regulations. Purchaser shall not export, re-export, or transfer the Goods or Confidential Information received from Seller without first obtaining the appropriate US Government approvals, if any. Export or transfer of the Goods and/or related information to any foreign person(s) or entity(ies), either within the US or outside of the US, may require advance export authorization by the appropriate US Government agency prior to export or transfer. In addition, technical data may not be exported or transferred to certain countries or specified designated nationals identified by US embargo controls without prior export authorization. Purchaser confirms that it understands and will comply with all applicable ITAR, EAR and embargo compliance requirements. Seller will cooperate with Purchaser to obtain any export licenses Purchaser seeks, but obtaining such licensing shall be the exclusive responsibility of Purchaser and Seller makes no representation or warranty regarding the issuance of export licenses.

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33 Notices

Any notice to be given hereunder shall be given in writing; postage prepaid and shall be effective when deposited in the U.S. Mail. Alternatively, when Purchaser visits www.SequoiaAppliedSolutions.com or send e-mails to Seller, Purchaser is communicating with Seller electronically. Purchaser consents to receive communications from Seller electronically. Seller will communicate with Purchaser by e-mail. Purchaser agrees that all agreements, notices, disclosures and other communications that Seller provides electronically satisfy any legal requirement that such communications be in writing.

34 Entire Agreement

The parties expressly acknowledge that these Terms are complete, are an essential part of the Contract, and supersede all prior negotiations, agreements and understandings of the parties regarding the subject matter of these Terms. These Terms may only be modified by the express written consent of Seller.

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