

# TERMS AND CONDITIONS OF SALE

## AILA TECHNOLOGIES, INC.

### 1. ORDERS

1.1 Orders; Acceptance of Orders; Contrary Terms. These Terms and Conditions of Sale (these "Terms"), and the terms of the Aila prepared quote setting forth the Products that Customer is purchasing and the price of such Products (the "Quote"), will govern all orders submitted by Customer to Aila Technologies, Inc. ("Aila") for Products. Customer may submit an order to Aila for the purchase of Products (a "Customer Order") by either (a) returning to Aila the applicable Quote countersigned by Aila or (b) delivering a Customer purchase order referencing an Aila Quote. Aila may accept or reject in its sole discretion any Customer Order submitted to it. A Customer purchase order referencing an Aila Quote shall be deemed to incorporate and be governed by these Terms and the Quote's terms. Once accepted by Aila, a Customer Order shall be a binding obligation for Aila to deliver and Customer to purchase the Products specified in the Quote. Customer may not cancel a Customer Order once accepted by Aila. A Customer Order shall be deemed accepted by Aila upon the earlier of Aila's confirmation of its acceptance of the order, Aila signing and returning to Customer a Quote already countersigned by Customer, or its delivery of the ordered Products. These Terms and the Quote's terms shall take precedence over any terms and conditions which appear in Customer's purchase order or in any documents incorporated by reference in Customer's purchase order. Aila's acceptance of a Customer Order is conditioned upon Customer's acceptance of these Terms set forth herein and the Quote. No term or condition of Customer's order additional to or different from these Terms shall become part of the Customer Order or the agreement between Aila and Customer unless expressly agreed to in writing by Aila. Customer shall be deemed to have accepted these Terms by countersigning the Quote, by written acknowledgement (including by issuance of a purchase order), by conduct or course of dealing, or by acceptance of or payment for any Products. Aila's failure to object to any provision contained in any communication from Customer shall not be construed as a waiver of these Terms or those of the Quote nor as an acceptance of any such provision.

#### 1.2 Certain Definitions.

"Product(s)" means the Aila branded hardware product(s) described in the Customer Order. "Product(s)" does not include separately provided Software Development Kit or Third Party Products that are not components or parts of such Aila branded Products.

"End-User Customer" means the original user of the Product.

### 2. QUOTATIONS

All price quotations provided by Aila expire thirty (30) calendar days after the date of issuance, unless otherwise specified in the quotation or in writing.

### 3. FEES AND PAYMENT

Customer shall pay to Aila the prices specified or incorporated by reference in the applicable Customer

Order for the Products. All prices shown are, and payment will be made, in U.S. dollars. Customer shall pay all invoices within thirty (30) days of the date of invoice, unless payment terms are otherwise set forth on quotation or in writing. Aila reserves the right at any time to revoke any credit extended to Customer, and cancel any Customer Orders, if payment is not received by the due date of any invoice or Customer's credit does not warrant further extension of credit. Aila reserves the right to change prices for Products at any time, effective immediately upon notice to Customer for all Customer Orders submitted following the effective date of such notice. Aila reserves the right to charge, and Customer agrees to pay, a late charge equal to one and a half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, on any amount that is unpaid on the due date, and on any other outstanding balance.

### 4. TAXES AND DUTIES

All prices hereunder are exclusive of any applicable sales, use, VAT, or other taxes, or any duties or levies, and Customer agrees to pay (or reimburse Aila, as the case may be) any such taxes or duties due in connection with the sale and delivery of the Products to Customer, other than taxes on Aila's net income.

### 5. DELIVERY

Title to and risk of loss for all shipments will pass from Aila to Customer, F.O.B. Aila's shipping point (which may include applicable manufacturing or distribution locations), except that title to all software will remain with Aila and its suppliers. Any delivery dates provided by Aila to Customer are non-binding estimates only and Customer shall have no claim against Aila for any delays. Customer shall pay all shipping, handling, customs, duties, taxes, freight, insurance, and other charges associated with shipments of the Products. Customer is responsible for obtaining insurance for the Products after transfer of title; all claims with respect to the Product, including delay or damage caused by the shipper, must be made by Customer directly with its insurance carrier. Customer shall inspect Products promptly upon their receipt and must notify Aila in writing within two (2) business days after the receipt of Products if any part of the order is missing, erroneous or nonconforming. If the Customer fails to give such a notice, the order shall be considered in accordance with the specification and the Customer shall be deemed to have accepted the Products. Aila reserves the right to make delivery in installments, with all such installments to be separately invoiced and paid for individually, without regard to subsequent deliveries. Delay in delivery of any installment will not relieve Customer of its obligation to accept remaining deliveries. If shipment of any order is delayed at Customer's request, Aila may invoice Customer for such orders, and Customer shall reimburse Aila for any and all costs of storage incurred by Aila after the date that Aila is prepared to make shipment. Returns of Products will not be permitted unless expressly authorized in writing by Aila.

### 6. LIMITED WARRANTY

Aila warrants its Hardware against defects in materials and workmanship for a period of twelve (12) months (the "Warranty Period") from the time of shipment. This warranty does not cover normal wear and tear and any product defects that result from (i) improper use or installation; (ii) unauthorized modifications or alterations; (iii) misuse, accidents, negligence or vandalization; (iv) operation outside specified operating parameters, including excessive voltage or current supplied to or drawn from the interface connections; (v) static electricity or electro-static discharge; or (vi) repair performed by anyone other than Aila or its authorized representatives. This warranty is provided to the first End-User Customer and is not transferrable. Products must be purchased from Aila or from an authorized reseller to qualify for coverage under this warranty. Returns must first be authorized by Aila and defective products can be returned, freight prepaid, within the warranty period. Returned Products that are inspected and qualified as eligible for warranty coverage will be repaired or replaced with a substantially similar product, solely at Aila's option, and without charge. The original Warranty Period will not be extended for fixed or replaced Products. Return shipping expenses are the responsibility of the End-User Customer. Aila is not responsible for providing any replacement units during the repair period. AILA'S LIABILITY UNDER THIS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT WITH NEW OR REFURBISHED PARTS. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT.

#### 7. LIMITATION OF LIABILITY

IN NO EVENT WILL AILA BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS OR THEFT, ARISING FROM OR RELATING TO THE PRODUCTS, SOFTWARE, DOCUMENTATION, OR ANY AGREEMENT BETWEEN THE PARTIES PURSUANT TO WHICH ANY OF THE FOREGOING ARE FURNISHED, EVEN IF AILA KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. AILA'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE PRODUCTS, SOFTWARE, DOCUMENTATION, AND ANY AGREEMENT BETWEEN THE PARTIES PURSUANT TO WHICH ANY OF THE FOREGOING ARE FURNISHED, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO AILA FOR THE PRODUCT AT ISSUE. THIS LIMITATION WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE CLAIM. IN NO EVENT WILL AILA'S SUPPLIERS HAVE ANY LIABILITY WITH RESPECT TO THE PRODUCTS, DOCUMENTATION, OR ANY AGREEMENT BETWEEN AILA AND CUSTOMER PURSUANT TO WHICH ANY OF THE FOREGOING ARE FURNISHED. AILA DOES NOT ASSUME ANY LIABILITY CONNECTED TO THE THEFT OF ANY OF ITS PRODUCTS OR ANY OF THE DEVICES OR PERIPHERALS THAT ARE USED IN CONJUNCTION WITH ITS PRODUCTS (E.G. IPADS, IPODS, IPHONES,

PAYMENT TERMINALS).

#### 8. INDEMNIFICATION

Aila will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Product infringes any U.S. patents issued as of the effective date of the applicable Customer Order, U.S. copyrights, U.S. trademarks, or trade secrets recognized under the Uniform Trade Secrets Act, and Aila will pay those damages finally awarded against Customer in any such action that are specifically attributable to such claim or those damages agreed to in a monetary settlement of such action. The foregoing obligation is conditioned on (a) Customer notifying Aila promptly in writing of such action, (b) Customer giving Aila sole control of the defense thereof and any related settlement negotiations, and (c) Customer cooperating with Aila and, at Aila's request and expense, assisting in such defense. If any Product becomes, or in Aila's opinion is likely to become, the subject of an infringement claim, Aila may, at its option and expense, either (a) procure for Customer the right to continue using the Product, (b) replace or modify the Product so that it becomes non-infringing, or (c) accept return of the affected Product and refund to Customer the fees actually paid by Customer to Aila for the affected Products less a reasonable amount for depreciation thereof, in which case Customer's right to use such Product will be terminated. Notwithstanding the foregoing, Aila will have no obligation under this Section 8 or otherwise with respect to any infringement claim based upon (i) any use of the Product not in accordance with these Terms or for purposes not intended by Aila, (ii) any use of Product in combination with other products, equipment, software, or data not supplied by Aila, or (iii) any modification or alteration of the Product by any person other than Aila or its authorized representatives, and Customer will indemnify, defend, and hold Aila harmless from and against all claims, suits, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising from or relating to such infringement claim. This Section 8 states Aila's entire liability, and Customer's sole and exclusive remedy, for infringement claims and actions.

#### 9. OTHER PRODUCTS AND SERVICES

Customer acknowledges and accepts responsibility for the selection of the Products and selection and use of other equipment, software, and services acquired from third parties outside of these Terms and used with the Products to achieve the Customer's intended results. Aila has no responsibility for planning, development, provisioning, implementation, installation, system integration, servicing or support unless provided under a separate written consulting or service agreement.

#### 10. CONFIDENTIALITY

The Products, any benchmark or performance tests relating to the Products, and certain information regarding the Products and Aila's business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information is considered Aila's "Confidential Information." Customer shall protect Aila's Confidential Information from unauthorized dissemination

and use with the same degree of care that it uses to protect its own like information and, in any event, will use no less than a reasonable degree of care in protecting such Confidential Information. Customer will use the Confidential Information only for those purposes expressly authorized in these Terms. Customer will not disclose to third parties Aila's Confidential Information without the prior written consent of Aila, except to consultants or contractors who have agreed to maintain the confidence of such information by signing a non-disclosure agreement with the Customer and who have a need to have access to such information.

## 11. OWNERSHIP

11.1 Intellectual Property Rights. Customer acknowledges and agrees that Aila and its suppliers exclusively own all patent, design rights, copyright, trade secret, trademark, moral rights, and other intellectual property rights worldwide (collectively, "Intellectual Property Rights") in and to the Products and all Aila Confidential Information, and regardless whether or not the design or development of the products are requested by the customer, and whether or not Aila has received input from the Customer when designing or developing the Products or has charged a fee for the design and development of the Products. Aila and its suppliers expressly reserve all rights not expressly granted to Customer in these Terms. Customer shall not engage in any act or omission that would impair any Intellectual Property Right of Aila or any of its suppliers and Customer shall not reverse engineer or reproduce the Products. Neither these Terms nor any purchase of Products hereunder shall be construed to confer upon Customer or its customers any license under any patent or other proprietary rights of Aila, except the right to use such Products for the purposes for which they are sold.

11.2 Embedded Firmware. Products may contain embedded firmware. Aila does not grant Customer any license to, and Customer may not, (a) copy such firmware, (b) modify or create any derivative work of such firmware, or (c) reverse engineer or decompile or derive the source code of such firmware. Aila provides such firmware as an embedded part of the Products only. For purposes of clarity, Customer may freely use the Products and such use includes the operation of the firmware as embedded in such Products.

11.3 Software. Use of Aila's separately provided Software Development Kit (SDK) is governed by a separate software licensing agreement.

## 12. TERM AND TERMINATION

Either party may terminate any outstanding or ongoing Customer Orders upon delivery of written notice to the other party if the other party either (a) materially breaches these Terms or the Quote's terms and does not cure such breach within thirty (30) days of delivery of written notice of such material breach or (b) fails to pay any amounts owed under a Customer Order when due and does not cure such breach within ten (10) business days of delivery of written notice of such failure. The obligations intended to survive termination or expiration of this Agreement, including sections 3, 4, 6, 7, 8, 9,10,11 and 13, shall

continue in full force and effect and any payment obligations that accrued prior to the termination or fulfillment of any Customer Order will survive the termination or fulfillment of such Customer Order for any reason.

## 13. GOVERNING LAW AND VENUE

All purchases, sale and delivery of Products under these Terms, and any disputes arising therefrom, will be governed by the laws of the State of Massachusetts, without giving effect to any conflicts of laws principles that require the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to transactions under these Terms. Any action or proceeding arising from or relating to the transactions under these Terms must be brought in a state or federal court located in Boston, Massachusetts, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding, except that either party may file a claim or take action in any court having jurisdiction to protect its intellectual property or Confidential Information. Aila and Customer will attempt to settle any claim or controversy arising out of these Terms through consultation and negotiation in good faith; provided, however that this does not preclude either party from initiating a legal proceeding. Customer's performance under these Terms will not be suspended during the period of any dispute.

## 14. SECURITY INTEREST

Aila retains a purchase money security interest in each Product, and in any addition to or replacement or proceeds thereof, in the amount of its price until paid in full. Upon Aila's request, Customer will promptly execute and return for filing any documents, such as a form UCC-1, needed to perfect Aila's security interest. If necessary, Aila may file a copy of these Terms.

## 15. ASSIGNMENT

Customer may not assign or transfer, by operation of law or otherwise, any of its rights under any Customer Order or these Terms without Aila's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void.

## 16. CONTINGENCIES

Aila will be excused from performance of its obligations under these Terms and any Customer Order if such performance is rendered impracticable by the occurrence of any contingency or condition beyond the control of either Aila or Aila's suppliers, including but not limited to acts or omissions of any governmental authority, delays or failures of subcontractors or suppliers, labor dispute, fire, flood or other casualty, terrorist attack, war, failure or delay in transportation, insurrection or riot, shortage of labor, fuel, energy, raw materials or machinery or technical failure. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

## 17. EXPORT CONTROL

Customer acknowledges that the laws and regulations of the United States may restrict the export and re-export of

Products or Software of United States origin. Customer agrees that it will not export or re-export the Products or Software in any form without the appropriate United States and/or foreign government consents and licenses.

#### 18. GENERAL

These Terms, together with the terms set forth in the Quote, constitute the entire agreement between the parties, and supersede all prior agreements between the parties, with respect to the subject matter hereof. If the terms of the Quote expressly conflict with these Terms, then the Terms of the Quote shall govern. All waivers must be in writing. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All notices or approvals required or permitted under this License will be in writing and deemed received upon acknowledgement by the receiving party. If any provision of these Terms is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Unless the context clearly requires otherwise, "includes" and "including" are not limiting. Any Customer Orders, agreements or amendments must be in writing and may be signed in counterparts, including by electronic signature, each of which shall be considered an original.