



CALNETIX TECHNOLOGIES, LLC STANDARD TERMS AND CONDITIONS OF SALE

1. **Offer and Acceptance:** CALNETIX offers to sell and deliver products and services in accordance with the terms and conditions set forth herein. Acceptance of this offer is expressly limited to such terms. CALNETIX hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless CALNETIX expressly agrees to such terms in writing.
2. **Prices:** If the price of fuels, metals, raw materials, equipment or other production costs increases significantly, CALNETIX shall have the right and Buyer shall have the obligation to renegotiate the price of all products not yet shipped, and if an agreement is not reached, CALNETIX shall have the right to terminate this contract without liability.
3. **Title and Delivery:** Shipments shall be delivered Ex Works, CALNETIX's facility, California (INCOTERMS 2010). Title and liability for loss or damage shall pass to Buyer upon the delivery of the products to the Ex-Works point pursuant to INCOTERMS 2010. Any subsequent loss or damage shall not relieve Buyer from its obligations. CALNETIX may deliver products in installments. Delivery dates are estimates. CALNETIX shall not be liable for any damage, losses or expenses incurred by Buyer if CALNETIX fails to meet the estimated delivery dates.
4. **Payment Terms:** If CALNETIX extends credit to Buyer, payment terms shall be net thirty (30) days after CALNETIX's invoice. CALNETIX may change or withdraw credit amounts or payment terms at any time for any reason. If the products are delivered in installments, Buyer shall pay for each installment in accordance with the above payment terms. If Buyer fails to make any payment when due, CALNETIX may suspend or cancel performance under any agreements in which CALNETIX has extended credit to Buyer. CALNETIX's suspension of performance may result in rescheduling delays. If, in CALNETIX's judgment, Buyer's financial condition does not justify the payment terms specified herein, then CALNETIX may terminate this contract unless Buyer immediately pays for all products that have been delivered and pays in advance for all products to be delivered. Termination in accordance with this clause shall not affect CALNETIX's right to pursue any other available remedies. Buyer shall not be entitled to set-off any amounts due to Buyer against any amount due CALNETIX in connection with this transaction, unless agreed in writing by an authorized representative of CALNETIX.
5. **Taxes:** Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all applicable taxes and duties. CALNETIX will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes unless Buyer provides CALNETIX with a duly executed sales tax exemption certificate. If Buyer is required by law to withhold any amount of tax from its payment to CALNETIX, Buyer shall promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize such withholding tax.
6. **Contingencies:** CALNETIX shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond CALNETIX's reasonable control, including but not limited to, shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God. In the event of a shortage of products, CALNETIX may allocate, at its sole discretion, product production and deliveries.
7. **Limited Warranty and Related Remedies:** CALNETIX warrants that upon delivery all products covered by this Order will conform to applicable written specifications mutually agreed upon by the parties and included in the Order and will be free from defects in workmanship and material for a period of twelve (12) months from the date of delivery to Buyer. The Warranty Period for services rendered by CALNETIX shall be ninety (90) days from the date the service is performed. Notwithstanding the foregoing, CALNETIX shall not be liable for any defects that are caused by the neglect, misuse or mistreatment by an entity other than CALNETIX, including improper storage, installation, operation, maintenance or testing, or for any products that have been altered or modified in any way by an entity other than CALNETIX, or for use of the products for unauthorized applications. Buyer's right to claim warranty is conditioned upon Buyer paying any costs incurred to remove, transport or reinstall the products, and Buyer returning to CALNETIX any used or defective part (excluding consumable parts) within thirty (30) days of replacement hereunder. CALNETIX will use commercially reasonable efforts to obtain and flow through to Buyer third party warranties for any products not manufactured by CALNETIX. All products provided to Buyer hereunder will be new. If any product fails to conform to the warranty set forth above, CALNETIX's sole liability shall be at its option to repair or replace such product, or credit Buyer's account for such product. CALNETIX's liability under this warranty shall be limited to products that are returned during the warranty period to the address designated by CALNETIX and that are determined by CALNETIX not to conform to such warranty. If CALNETIX elects to repair or replace such products, CALNETIX shall have a reasonable time to repair such products or provide such replacements. Repaired or replaced products shall be warranted for the

remainder of the original Warranty Period.

Buyer acknowledges that from time to time, CALNETIX may provide technical, applications or design advice, quality characterization, reliability data or other services. Buyer agrees that providing these services shall not expand or otherwise alter CALNETIX's warranties, as set forth above, and no additional obligations or liabilities shall arise from CALNETIX providing such services or advice.

THE FOREGOING SETS FORTH CALNETIX'S ONLY OBLIGATIONS AND BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY, WHETHER SUCH CLAIMS ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES. THE FOREGOING IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. **Intellectual Property Rights:** Buyer acknowledges that the products incorporate technology that is subject to Seller's intellectual property rights, and that such technology is not sold to Buyer and is only licensed to Buyer to the extent reasonably necessary for the ordinary use of the particular product with which it is furnished. Seller or its licensors shall retain all intellectual property rights and interests in, to and underlying the products, and nothing in this Agreement shall be construed to grant Buyer a license of any kind to any intellectual property rights of Seller except to the limited extent set forth in the preceding sentence. To the maximum extent allowable under applicable law, Buyer agrees that it shall not, directly or indirectly through any third party, reverse engineer or duplicate any product, or seek to reveal the trade secrets or knowhow underlying any such product.
9. **Intellectual Property Indemnification:** CALNETIX shall pay any damages, liabilities or costs (excluding consequential and exemplary damages) finally awarded against Buyer and its directors, officers and employees (the "Buyer Indemnitees"), or agreed to by CALNETIX as settlement or compromise, and will defend the Buyer Indemnitees against any claim, suit or proceeding brought against such Buyer Indemnitee, insofar as such claim, suit or proceeding is based on an allegation that the products supplied by CALNETIX to Buyer directly infringe any United States, Canadian, Japanese or European Union member country patent, copyright, or trade secret; provided CALNETIX is (i) promptly informed and furnished a copy of such claim, suit, or proceeding, (ii) given all evidence in the Buyer Indemnitee's possession, custody or control, (iii) given reasonable assistance in and sole control of the defense thereof and all negotiations for its settlement or compromise. Buyer hereby agrees to make available to CALNETIX the benefit of any defense available to Buyer to any infringement allegation hereunder, including, but not limited to, any license or option to license or sub-license any intellectual property right that is the subject of such infringement allegation. In the event of an allegation for which CALNETIX is obligated to defend Buyer pursuant to this Section, CALNETIX may, but shall not be obligated to: (i) obtain a license that allows Buyer to continue to sell or use, as appropriate, the products, (ii) replace or modify the products (as applicable) so as to be non-infringing, but in a manner that does not materially affect the functionality thereof, or (iii) if neither (i) nor (ii) is available to CALNETIX at a commercially reasonable expense, then CALNETIX may refund to Buyer the aggregate fees paid by Buyer for the products plus transportation costs, less a reasonable sum for use and damage, and prospectively cease to indemnify Buyer with regard to such products without being in breach of this contract. If CALNETIX elects to provide either of the options set forth in clauses (i) and (ii) above, CALNETIX's indemnity obligation pursuant to this Section shall be entirely fulfilled as to that individual claim, except for any damages, liabilities, or costs (excluding consequential and exemplary damages) incurred by Buyer prior to CALNETIX taking such action. If CALNETIX elects the option set forth in clause (iii) above, CALNETIX's indemnity obligation under this contract shall be entirely fulfilled, regardless of any additional claims. CALNETIX shall have no liability for any costs, losses or damages resulting from Buyer's willful acts, or any settlement or compromise incurred or made by Buyer without CALNETIX's prior written consent. CALNETIX shall have no obligation to defend and no liability for any costs, losses or damages, to the extent that an infringement allegation is based upon: (i) Buyer's use of the products in combination with any other product, software or equipment; (ii) Buyer's use of the products in a manner or for an application other than for which they were designed or intended, regardless of whether CALNETIX was aware of or had been notified of such use; (iii) Buyer's modifications to the products; or (iv) CALNETIX's compliance with Buyer's particular design, instructions or specifications (such claims - i.e. those set forth in (i) through (v) above - are individually and collectively referred to herein as "Other Claims"). Buyer shall indemnify and hold CALNETIX harmless against any damages, liabilities or costs finally awarded against CALNETIX or agreed to by Buyer as settlement or compromise, and will defend any claim, suit or proceeding brought against CALNETIX insofar as such claim, suit or proceeding is based on an allegation arising from Other Claims.

THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INTELLECTUAL PROPERTY INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT, AND THAT IN THE ABSENCE OF SUCH TERMS, THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

10. **Limitations and Damages Disclaimer:**

- 10.1 General Limitations. IN NO EVENT SHALL CALNETIX BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE PRODUCTS PROVIDED HEREUNDER, REGARDLESS OF WHETHER CALNETIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, RETESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST CALNETIX MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.
- 10.2 Specific Limitations. IN NO EVENT SHALL CALNETIX'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY CALNETIX PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO CALNETIX FOR THE PARTICULAR PRODUCT SOLD UNDER THIS CONTRACT WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR PRODUCT SOLD TO BUYER UNDER THIS CONTRACT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.
- 10.3 BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

- 11. **Indemnification:** CALNETIX agrees to indemnify, defend and hold harmless Buyer, and its officers, directors, employees and agents from and against all third party demands, suits, claims, causes of action, costs, expenses and damages (including court cost and reasonable attorneys' fees) arising under this Purchase Order for personal injury or death, or any loss or damage to tangible property, sustained by a third party to the extent caused by the gross negligence or willful misconduct of CALNETIX. For purposes of Calnetix's indemnity obligation pursuant to this Section 11, no part of the product is considered third party property. Buyer agrees to indemnify, defend and hold harmless CALNETIX, and its officers, directors, employees and agents from and against all third party demands, suits, claims, causes of action, costs, expenses and damages (including court cost and reasonable attorneys' fees) for personal injury or death, or any loss or damage to property, sustained by a third party to the extent caused by the gross negligence or willful misconduct of Buyer.
- 12. **Cancellations and Rescheduling.** No cancellation or rescheduling of product by Buyer within one-hundred-twenty (120) days of CALNETIX's estimated shipping date for such product will be accepted. Any cancellation or rescheduling of product by Buyer more than one-hundred-twenty (120), but less than one hundred eighty (180) days, before CALNETIX's estimated shipping date for such product may result in a charge to Buyer. Such charge, if any, shall be reasonably determined by CALNETIX based on factors such as whether the product was manufactured specifically for Buyer, CALNETIX's ability to change its production schedule within the period of notice provided by Buyer, whether CALNETIX acquired or allocated particular supplies or equipment to meet Buyer's order and such other factors as reasonably determined by CALNETIX.
- 13. **Non-waiver of Default:** In the event of any default by Buyer, CALNETIX may decline to make further shipments. If CALNETIX elects to continue to make shipments, CALNETIX's action shall not constitute a waiver of any such default or affect CALNETIX's legal remedies for any such default.
- 14. **Governing Law; Arbitration:** This Agreement shall be governed by and construed under the laws of the State of California, without regard to the conflict of law principles thereof. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. The parties hereto agree that any claim, controversy or other dispute based upon or arising out of this Agreement and/or its formation, breach, performance, interpretation and/or application (a "dispute"), shall be conducted, decided, determined and/or resolved pursuant to and in accordance with the provisions of this Section. Any judicial proceeding commenced in violation of this provision shall be stayed pending completion of negotiations and arbitration required by this Section. Running of any applicable statute of limitation shall be stayed from the date of a demand for arbitration under this Section to the date 60 days after issuance of an arbitrator's decision hereunder. In the event of a dispute, the parties hereto agree to attempt in good faith to resolve the dispute between them. If the parties are unable to settle the dispute

within thirty days of written notice by either party, such dispute shall be finally settled by arbitration administered by the American Arbitration Association. Any such arbitration shall be conducted under the following terms and conditions: (a) Rules; Location. Arbitration will be under the Commercial Arbitration Rules of the American Arbitration Association (the "Rules"). The arbitration proceedings will be conducted in English in Los Angeles County, California. (b) Arbitrators. In any arbitration there will be one (1) Arbitrator mutually agreed upon by the parties, or selected in accordance with the Rules; provided, that such arbitrator shall have knowledge of and experience in dealing with corporate law and business agreements. If determination of the dispute involves understanding of technical issues, the arbitrator selected must possess a practical knowledge of the relevant technical issues. (c) Binding Effect. The award rendered in arbitration will be final and binding and may be enforced in any court of competent jurisdiction. (d) Costs and Attorneys' Fees. Unless the arbitrator finds that exceptional circumstances require otherwise or applicable statutory law provides for an award of attorneys fees and costs and the arbitrators award reasonable attorneys fees and costs pursuant to application of such statutory law, each party shall bear its own costs of arbitration, including attorneys' fees, provided, that each party shall share the fees and expenses of the arbitrators.

15. **Export Control:**

15.1 Buyer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from CALNETIX, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by the EAR. Buyer furnishes the assurances provided herein to CALNETIX in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

15.2 Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code acquired from CALNETIX under this contract or any direct product of such technical data, software or software source code. Accordingly, Buyer shall not sell, export, re-export, transfer, divert or otherwise dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by US or applicable non-US laws. Further, Buyer shall give notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such product, technical data, software or software source code from Buyer with the intention of exportation. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to fulfill its obligations under this contract. If government approvals cannot be obtained, CALNETIX may terminate, cancel or otherwise be excused from performing any obligations it may have under this contract.

15.3 Any product export classification made by CALNETIX shall be for CALNETIX's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such product or whether an export license or other documentation is required for the exportation of such product. This Section 15 shall survive termination of this contract.

16. **Assignment:** This contract shall not be assignable by Buyer without CALNETIX's prior written consent. Any unauthorized assignment by Buyer shall be null and void.

17. **Entire Agreement:** This contract constitutes the entire agreement between the parties relating to the sale of the products or services and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the sale of the products or services made by any CALNETIX representative, which are not stated herein, shall be binding on CALNETIX. No addition to or modification of any provision of this contract shall be binding upon CALNETIX unless made in writing and signed by a duly authorized CALNETIX representative. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in this contract. These terms and conditions shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any purchase order or other writing not expressly incorporated herein, including but not limited to data sheets, application notes and purchase order acknowledgements. The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract.