

Silvus Technologies, Inc. Terms and Conditions of Sale

The terms and conditions (“Terms”) contained herein apply to the sale of the products supplied by Silvus Technologies, Inc. a California corporation with its principal place of business at 10990 Wilshire Blvd, Los Angeles, CA (“Silvus”) to buyer (“Buyer”).

1. PRICING

Prices are exclusive of, and Buyer will pay, applicable sales, use, service, value added or like taxes, unless Buyer has provided Silvus with an appropriate exemption certificate for the local jurisdiction.

2. ORDER PLACEMENT

2.1. All orders for Products by Buyer will: (a) be placed by submission of written purchase order by Buyer, referring to these Terms, and will set forth Buyer’s and Silvus’ part numbers, description of the Products to be purchased, quantity, requested delivery dates and delivery instructions; (b) be subject to acceptance in writing within ten (10) days by Silvus at its principal place of business; and (c) not be binding until the earlier of such acceptance or shipment by Silvus, and, in the case of acceptance by shipment, only as to the portion of the order actually shipped. Alternate terms may result in schedule delay and/or increase in price.

2.2. The Terms will apply to each order accepted or shipped by Silvus. The provisions of Buyer’s form of purchase order or other business forms will not apply to any order notwithstanding Silvus’ acknowledgement or acceptance of such order.

2.3. Alternative terms may result in schedule delay and/or changes in quoted pricing. Silvus will not be bound by terms and conditions other than these unless formally accepted in writing by an authorized Silvus representative.

3. RESCHEDULING/CANCELLATION OF PURCHASE ORDERS

Without penalty, Buyer may adjust order(s) previously accepted by Silvus that have not been shipped in accordance with the schedule below:

0 to 90 days prior to expected date of shipment: No adjustment permitted

> 90 to 120 days prior to expected date of shipment: +/- 25% from original quantity

> 120 days prior to expected date of shipment: +/- 50% from original quantity

Adjustments requested within 90 days from agreed upon date of delivery may be requested by the Customer, however Silvus retains the right to deny the adjustment, or propose alternative schedule and/or pricing in its sole discretion.

4. DELIVERY AND SHIPPING

4.1. The promised delivery date is the best estimate possible based upon current and anticipated manufacturing capabilities of when the product will be shipped. Silvus assumes no liability for loss, damage, or consequential damages due to delivery delays.

4.2. All Products will be shipped by Silvus F.O.B place of manufacture. Buyer will be responsible for, and will pay all shipping, freight and insurance charges. All risk of loss of or damage to Products will pass to Buyer upon delivery by Silvus to the carrier, freight forwarder or Buyer, whichever first occurs. Buyer will bear all risk of loss or damage in transit.

4.3. Failure of Buyer to reject any Products shipped to it by Silvus within thirty (30) days after receipt thereof will constitute complete and conclusive acceptance by Buyer of such Products. Products may only be rejected for failure to conform to specifications, and any such rejected Products shall be repaired or replaced at Silvus' option on an expedited basis. All claims for shipping damage must be made with the carrier.

4.4 All sales are final upon shipment and inspection in accordance with Section 4.3, and Buyer's remedies after final inspection are limited to those listed in Section 9, Warranties.

5. EXCUSABLE DELAY

Silvus will not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond Silvus' control, including but not limited to acts of God, war, riot, embargos, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials. In the event of any such delay, Silvus may defer the delivery date of orders for Products for a period equal to a reasonable recovery period associated with such delay.

6. INVOICES/PAYMENT

6.1. If Silvus has granted credit approval to Buyer in writing and such credit approval has not been suspended or revoked by Silvus, then payment for all shipments of Products made to Buyer under the Terms will be due within the payment terms offered to Buyer. Silvus reserves the right to assess late charges for overdue payments, at the rate of 1-1/2% per month or the maximum rate permitted by applicable law, whichever is lower. Silvus may change credit or payment terms or withhold shipment of an order at any time when, in Silvus' opinion, Buyer's financial condition, previous payment history, or the nature of the Buyer's relationship with Silvus so warrants.

6.2. Buyer hereby grants Silvus a purchase money security interest in all Products shipped on credit by Silvus, and in all proceed therefrom, in order to secure payment in full to Silvus of the purchase price for such Products (and any late charges if applicable). Buyer agrees to take all actions requested by Silvus necessary to perfect such security interest.

6.3. If Silvus has not granted credit approval, standard terms for purchase require a 50% down payment at time of order to begin production, with the balance due prior to shipment. No Products will be shipped prior to receipt of payment in full.

6.4. If an order is ready for shipment but final payment remains outstanding for 60 days following invoice, Silvus reserves the right, in its sole discretion, to terminate the transaction and retain down payment to cover out-of-pocket costs and/or as a restocking fee.

6.5. In addition to any other rights and remedies available to it, Silvus may cease deliveries of Products at any time in the event that Buyer defaults in any payment due to Silvus hereunder and such default continues unremedied for a period of ten (10) days.

6.6. Buyer shall make all payments to Silvus in United States dollars.

7. TERMINATION

In addition to any other rights and remedies available to it, Silvus may terminate its relationship with Buyer at any time in the event that (i) Buyer is involved in any voluntary or involuntary bankruptcy, proceeding or any other proceeding concerning insolvency, dissolution, cessation of operations, or reorganization of indebtedness and the proceeding is not dismissed within sixty (60) days or (ii) Buyer becomes unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors.

8. LIMITATION OF LIABILITY

WHETHER OR NOT ANY REMEDY OF BUYER HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE, SILVUS WILL NOT BE LIABLE FOR AN INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSE (INCLUDING WITHOUT LIMITATION COST OF COVER, LOST PROFITS, OR LOST BUSINESS) ARISING, DIRECTLY OR INDIRECTLY, UNDER THIS AGREEMENT OR FROM THE PURCHASE, USE OR SALE OF SILVUS PRODUCTS, WHETHER OR NOT SILVUS WAS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR EXPENSES. SILVUS' LIABILITY TO BUYER UNDER THESE TERMS WILL BE LIMITED TO THE AMOUNTS PAID BY BUYER TO SILVUS ON THE PURCHASE ORDER AT ISSUE.

9. WARRANTIES

9.1. Silvus warrants to Buyer for 365 days (ruggedized radios) and 180 days (OEM version) that the Products will substantially conform with the published Product specifications, if properly used in accordance with the procedures described in documentation supplied by Silvus. Silvus' exclusive obligation with respect to nonconforming Products shall be, at Silvus' option, (a) to replace the Product with one that conforms to the Specifications or (b) to use diligent efforts to provide Buyer with a correction of the defect. Defects in the Product will be reported to Silvus in a form and with supporting information reasonably requested by Silvus to enable it to verify, diagnose and correct the defect.

9.2. The warranties set forth above shall not apply to any Products that have been modified, repaired or altered, excepted by Silvus, or that have not been maintained in accordance with any handling or operation instructions supplied by Silvus, or that have been subjected to unusual physical or electrical stress, misuses, abuse, negligence or accidents.

9.3. The foregoing warranties are the sole warranties express or implied given by Silvus in connection with the products and Silvus disclaims all other warranties, including warranties of merchantability, fitness for a particular purpose, and noninfringement of third party rights. Silvus does not warrant that the products will operate continuously or be error free.

10. INDEMNIFICATION

10.1. At its option, Silvus will defend or settle any action brought against Buyer to the extent the action is based on claims that the Products infringe any U.S. patent or U.S. copyright, and will pay all damages and costs (including reasonable attorney's fees) finally awarded against Buyer on such claims, subject to the terms below:

10.2. Silvus' obligations under this Section are expressly conditioned on Buyer's (a) promptly notifying Silvus of the existence or the threat of such action, (b) granting Silvus sole control over the defense and settlement of the action, and (c) providing Silvus reasonable assistance in connection with such action.

10.3. Silvus will have no liability for claims based on use of Products in combination with products or as a part of processes not supported by Silvus, or on any modification other than a modification by Silvus.

10.4. Buyer agrees that in connection with resolving any such claim, Silvus may, at its option, (i) procure for Buyer the right or license to continue using the Product(s) which are the subject of such infringement claim; or (ii) replace or modify such Product(s) so that they become noninfringing; or (iii) upon return of all infringing Products, refund to Buyer the price actually paid by Buyer for such infringing Product(s), less a reasonable amount for use, damage, or obsolescence; or (iv) substitute for any infringing Product other suitable, non-infringing equipment.

THE FOREGOING REPRESENT SILVUS' ENTIRE LIABILITY AND BUYER'S SOLE REMEDY WITH RESPECT TO INFRINGEMENT BY SILVUS PRODUCTS OF THE PROPRIETARY RIGHTS OF ANY THIRD PARTY. NOTWITHSTANDING THE FOREGOING, SILVUS WILL NOT BE LIABLE FOR ANY CLAIM FOR INDEMNIFICATION MADE BY BUYER MORE THAN ONE (1) YEAR AFTER PURCHASE OF THE PRODUCT BY BUYER.

10.5. Buyer agrees to indemnify Silvus against and hold Silvus harmless from, any and all damages, losses, expenses (including reasonable attorney's fees and costs of litigation on an ongoing basis) and claims by any other party resulting from Buyer's acts, omissions or misrepresentations, regardless of the form of action.

11. CONFIDENTIAL INFORMATION

11.1. For a period of five (5) years from the date of disclosure, each party agrees not to disclose any of the other party's trade secrets, confidential documentation, data designs or other confidential information, verbal or written, which may be conveyed to the receiving party from any source before, during or subsequent to the term of this Agreement. It is expressly understood and agreed that any such information conveyed to the receiving party is intended for the receiving party's internal use only and shall be protected by the receiving party with the same diligence, care, and precaution (but in no event less than reasonable care) that the receiving party uses to protect its own confidential information. At the disclosing party's request, the receiving party shall return any or all confidential information then in the receiving party's possession, including all copies thereof.

11.2. Nonconfidential Information: The receiving party shall have no obligation with respect to disclosure and use of information to the extent such information:

- a. Is or becomes generally available to the public other than as a consequence of a breach of an obligation of confidentiality to the disclosing party; or
- b. Is made public by the disclosing party; or
- c. Is independently developed by the receiving party; or
- d. Is received from a third party independent of the disclosing party without breaching an obligation of confidentiality; or
- e. Is required to be disclosed by operation of law.

11.3. Each party agrees that it would be extremely difficult to measure the amount of damages to the damaged party from a breach or a threatened breach of any covenant contained in this Section 11, and that money damages would be an inadequate remedy, and that in such event the damaged party shall be entitled to temporary and permanent injunctive relief to the restrain the breaching party (and its employees) from such breach or threatened breach. In the event that any covenant made in this Section shall be more restrictive than permitted by applicable law, it shall be limited to the extent to which it is permitted. Nothing in this Section shall be construed as preventing damaged party from pursuing any and all remedies available for a breach or threatened breach of a covenant made in this Section, including the recovery of monetary damages from the breaching party (and/or its employees, directors, officers, and agents).

12. **GENERAL**

12.1. Compliance with Laws

Silvus represents and warrants that the Products supplied hereunder are produced and delivered in accordance with all applicable Federal, State, and local laws, rules and regulations.

12.2. Export Control

Silvus products are subject to the U.S. Export Administration Regulations (“EAR”, 15 CFR §§730-774). Buyer shall not, without prior authorization from the U.S. government, export or re-export Silvus products, directly or indirectly, to: (1) any countries that are subject to US export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine); (2) any end user Buyer knows or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in US export transactions by any federal agency of the U.S. government. Buyer is responsible for complying with any local laws in Buyer's jurisdiction which may impact their right to import, export or use these products. Once Silvus radios are enabled with AES encryption, they are classified under ECCN 5A002 in accordance with Section 740.17(b)(2) of the EAR. Exports / re-exports / transfers (in country) to government end-users headquartered or located outside the list of countries in Supplement 3 to Part 740 require an export license or other authorization from the U.S. Department of Commerce.

12.3. Controlling Law, Jurisdiction and Attorney's Fees

With respect to any litigation arising out of or related to the Terms: (a) California law, including that body of law relating to choice of law, will exclusively govern; (b) Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, and any dispute relating to any non-contractual obligations arising out of or in connection with this Agreement, shall be referred to and finally resolved by arbitration, under the JAMS Streamlined Arbitration Rules & Procedures in effect on the date of purchase. The place of arbitration shall be Los Angeles, California. Buyer hereby consents to the application of California law and arbitration by JAMS.

12.4. Complete Agreement; Amendment

These Terms, as implemented by Purchase Orders, are the sole and complete statement of obligations of the parties and supersede all prior oral and written and all contemporaneous oral understandings, negotiation, commitments, and proposals. Any changes hereto must be made in writing and signed by both parties.

12.5. No Waiver

No delay or failure by either party to exercise or enforce at any time, any right or provision of the Terms shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision under the Terms. A waiver to be valid shall be in writing but need not be supported by consideration.