

# SPEA AMERICA

## Terms and Conditions

These terms and conditions govern the sale of goods and the provision of services by SPEA America LLC ("SPEA"), to its customer ("Customer"). The term "Products" as used herein shall mean goods and/or services, as the context allows.

### 1. PRICES

- a) The total price for the Products is the amount indicated on the SPEA quotation or written agreement signed by an authorized representative of SPEA. Prices are valid for the period indicated on the quotation or signed agreement.
- b) Payment shall be made in USD (or in other currency indicated in the SPEA quotation) in Tyler, Texas, USA or such other place as SPEA may designate, by check, wire transfer, or, if required by SPEA, letter of credit.
- c) Prices exclude any sales, value added or similar tax which will be payable by Customer in addition to the purchase price. If exemption from taxes is claimed, Customer must provide a certificate of exemption.

### 2. ORDERS

- a) Product orders may require manufacture of Customer-specific configurations. Any changes to delivery dates or configurations after the initial order date may require a revised quotation and/or price change.

### 3. DELIVERY, SHIPMENT AND RISK OF LOSS

- a) Unless otherwise indicated on the SPEA quotation, delivery will be made EX-WORKS SPEA's designated factory per Incoterm 2010. Shipment by sea at Customer's request will be subject to additional charges and may void the Product warranty.
- b) Title to Products and risk of loss will pass to Customer at Delivery per the applicable Incoterm indicated on the SPEA quotation.

### 4. PRODUCT ACCEPTANCE

- a) Any special acceptance procedures must be agreed to by SPEA's authorized representative in writing and may be subject to additional charges.

### 5. PAYMENT

- a) Payment terms are subject to SPEA credit approval. Unless otherwise indicated in the quotation or separate written agreement of Customer and SPEA, payment for Products is due net 30 days from SPEA's invoice date.
- b) If payment is not received in accordance with the payment terms set forth in Section 5 (a) above, then SPEA, at its sole option, may assess a late payment fee from the date of tender on a month-to-month basis at the rate permitted by law.
- c) SPEA may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other SPEA agreement if, after 10 days written notice, the failure has not been cured.

### 6. WARRANTY

- a) The Product warranty is the standard SPEA Warranty in effect at the time an order is placed and is available at [www.spea.com](http://www.spea.com). In addition to the terms set forth in the SPEA warranty, SPEA shall not be liable for any direct or indirect damages incurred by Customer where such damages are the result of repair services, calibration or certification services performed by an unauthorized third party or a third party deemed unqualified by SPEA.
- b) THE ABOVE REFERENCED WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. SPEA SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

### 7. SOFTWARE LICENSE

- a) Customer's use of SPEA's and included third party proprietary software, including warranty, is governed by SPEA's Software License Agreement available at [www.spea.com](http://www.spea.com). In addition to the foregoing, test software licensing enablement may require transient test system access to the SPEA customer software portal account.

### 8. INTELLECTUAL PROPERTY CLAIMS

- a) SPEA will defend or settle any claim against Customer that Products infringe an intellectual property right in the country where the Products are initially delivered, provided Customer promptly notifies SPEA in writing, assists in the investigation or defense of the claim and allows SPEA to control the defense and settlement of such claim.
- b) In the event of an infringement claim under Section 8(a) SPEA will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely or is made, SPEA may, at its option, modify the Product, procure any necessary license, or replace it with a non-infringing, functionally equivalent product. If SPEA determines that none of these alternatives is reasonably available, SPEA will refund Customer's purchase price upon return of the Product.
- c) SPEA has no liability under this Section 8 if Customer fails to comply with its obligations hereunder or for any claim of infringement arising from:
  1. SPEA's compliance with, or use of, Customer's designs, specifications, instructions or technical information;
  2. Product modifications by Customer or a third party;
  3. Product use prohibited by specifications or related application notes; or
  4. Use of the Product with products not supplied by SPEA.
- d) These terms state SPEA's exclusive liability for claims of intellectual property infringement or misappropriation of trade secrets.

### 9. LIMITATION OF LIABILITY AND REMEDIES

- a) IN NO EVENT WILL SPEA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR MULTIPLE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF DATA, LOSS OF REVENUE, LOSS OF

PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER CLAIMS FOR SUCH DAMAGES ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- b) TO THE EXTENT THAT LIMITATION OF LIABILITY IS PERMITTED BY LAW, SPEA'S LIABILITY TO CUSTOMER IS LIMITED TO THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO SUCH CLAIM OF LIABILITY.
- c) The limitations set forth in Sections 9(a) and 9(b) above will not apply to infringement claims under Section 8, or to damages for bodily injury or death.
- D) THE REMEDIES IN THESE TERMS AND CONDITIONS ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.
- e) SPEA's acceptance of liability, its service obligations and/or its performance guarantees are contingent upon SPEA's authorized personnel or authorized third parties providing the required periodic service and calibration or certification of the Products.

### 10. CONFIDENTIAL INFORMATION

The Customer must keep, with the same standard of care as for its own confidential information, any information provided to it by SPEA, whether in writing or in any other form, and must use it solely for the purpose of fulfilling the agreement or any applicable purchase order.

### 11. GENERAL

- a) SPEA will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
- b) If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.
- c) A Customer who exports, re-exports or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. SPEA may suspend performance if Customer is in violation of applicable laws or regulations.
- d) To the maximum extent permitted by law, Customer shall be solely responsible for complying with, and shall otherwise assume all liabilities that may be imposed in connection with, any legal requirements adopted by any governmental authority.
- e) The Customer is aware of the fact that SPEA shall process the data of the Customer, either in writing or through electronic form, only for accounting or commercial purposes.
- f) The parties agree that disputes arising out of or in connection with these terms and conditions, the SPEA America Standard & Plus Warranties, and SPEA America Software License Agreement shall be governed by the laws of the State of Texas in the United States of America. The parties further agree that the state district courts or federal courts for the Eastern District of Texas, Tyler Division, shall have exclusive jurisdiction over any legal disputes arising out of or in connection with these terms and conditions, the SPEA America Standard & Plus Warranties, and SPEA America Software License Agreement. To the extent any of the foregoing provisions of this paragraph are determined to be unenforceable, the parties agree that with respect to any "major transaction" as that term is defined under the venue provisions of the Texas Civil Practice and Remedies Code, sole and exclusive venue of any dispute shall be Smith County, Texas.
- g) Neither party's failure to exercise any of its rights under these terms and conditions will be deemed a waiver or forfeiture of those rights.
- h) To the extent that any provision of these terms and conditions is determined to be illegal or unenforceable, the remainder of these terms and conditions will remain in full force and effect.
- i) These terms and conditions constitute the entire agreement between SPEA and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. SPEA's offer to sell or acceptance of Customer's offer to buy is expressly conditioned on Customer's assent to all of the terms and conditions herein. CUSTOMER'S SUBMISSION OF A PURCHASE ORDER IS DEEMED AN ACCEPTANCE OF THESE TERMS AND CONDITIONS, WITHOUT MODIFICATIONS OR ADDITIONS. IN THE EVENT OF A DISCREPANCY BETWEEN THESE TERMS AND CONDITIONS AND A CUSTOMER PURCHASE ORDER, THESE TERMS SHALL GOVERN.