

# General terms and conditions of sale

## §1 Applicability, Scope

1. These terms and conditions of sale (these “Terms”) are the only terms that govern the sale of the goods (“Goods”) by instagrid Inc (“Seller”) to its customers (“Buyer”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
2. The accompanying confirmation of sale (the “Sales Confirmation” and these Terms (collectively, this “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

## §2 Delivery

1. The goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order. Seller shall not be liable for any delays, loss, or damage in transit.
2. Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the on the Sales Confirmation (the “Delivery Point”) using Seller’s standard methods for packaging and shipping such Goods.
3. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.
4. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller’s notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance).

### §3 Non-Delivery

1. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
2. The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received.
3. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

### 4§ Shipping Terms

Seller shall make delivery in accordance with the terms on the face of the Sales Confirmation.

### §5 Title and Risk of Loss

1. Title passes to Buyer upon Seller's receipt of payment for the Goods delivered. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the California Uniform Commercial Code.
2. Risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

### §6 Amendment and Modification

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

## §7 Inspection and Rejection of Nonconforming Goods

1. Buyer shall inspect the Goods within five (5) days of receipt (“Inspection Period”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. “Nonconforming Goods” means only the following: (i) product shipped is different than identified in Buyer’s purchase order; or (ii) product’s label or packaging incorrectly identifies its contents.
2. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion,
  - a) replace such Nonconforming Goods with conforming Goods, or
  - b) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at Seller’s expense and risk of loss, the Nonconforming Goods to a facility chosen by Seller in Seller’s sole and absolute discretion. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Seller’s expense and risk of loss, the replaced Goods to the Delivery Point. If Seller determines that any Nonconforming Goods were improperly rejected by Buyer, Seller is entitled to reimbursement of the expenses incurred for returning any Nonconforming Goods and replacing any Goods.
3. Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

## §8 Price

1. Buyer shall purchase the Goods from Seller at the prices (the “Prices”) set forth in the Sales Confirmation.
2. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personnel, or real or personal property or other assets.

## §9 Payment Terms

1. Buyer shall pay all invoiced amounts due to Seller within fourteen (14) days from the date of Seller’s invoice. Buyer shall make all payments hereunder by wire transfer and in U.S. dollars.

2. Buyer shall pay interest on all late payments at the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder.
3. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

## §10 Limited Warranty

1. Seller warrants to Buyer that for a period of four (4) years from the date of shipment of the Goods ("Warranty Period"), that such Goods will be free from material defects in material and workmanship ("Warranty"). This Warranty does not cover damage or failure resulting from normal wear and tear, which is defined as the natural deterioration of the product due to ordinary use over time.
2. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 10(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
3. Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third-Party Products are not covered by the warranty in Section 10(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
4. Seller shall not be liable for a breach of the warranty set forth in Section 10(a) unless:
  - a) Buyer gives written notice of the defect, reasonably described, to Seller within seven (7) days of the time when Buyer discovers or ought to have discovered the defect;
  - b) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and
  - c) Seller reasonably verifies Buyer's claim that the Goods are defective.

5. Seller shall not be liable for a breach of the warranty set forth in Section 10(a) if:
  - a) Buyer makes any further use of such Goods after giving such notice;
  - b) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or
  - c) Buyer alters or repairs such Goods without the prior written consent of Seller.
6. Subject to Section 10(d) and Section 10(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.
7. THE REMEDIES SET FORTH IN SECTION 11(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(A).

## §11 Limitation of Liability

1. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
2. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.
3. The limitation of liability set forth in Section 12(b) above shall not apply to
  - a) liability resulting from Seller's gross negligence or willful misconduct and
  - b) death or bodily injury resulting from Seller's acts or omissions.

## §12 Data Privacy and Use of Product Data

If a product is returned to us for maintenance, repair, or any related services, we may access and collect data stored on or generated by the product (the "Product Data"). This Product Data may include, but is not limited to, usage data, diagnostics, performance metrics, and error logs. By returning the product to Seller for maintenance or repair, Buyer consents to Seller's collection, use, and retention of Product Data as described in this section.

## §13 Insurance

During the term of this Agreement and for a period of time determined by Seller thereafter, Seller may require Buyer to, at Buyer's own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability), in a sum determined by Seller, with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

## §14 Compliance with Law

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

## §15 Termination

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer:

- a) fails to pay any amount when due under this Agreement after Buyer's receipt of written notice of nonpayment;
- b) has not otherwise performed or complied with any of these Terms, in whole or in part; or
- c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

## §16 Waiver

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

## §17 Confidential Information

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is:

- (a) in the public domain;
- (b) known to Buyer at the time of disclosure; or
- (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

## §18 Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party’s (“Impacted Party”) control, including, without limitation, the following force majeure events (“Force Majeure Events”):

- a) acts of God;
- b) flood, fire, earthquake, pandemic, or explosion;
- c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest;
- d) government order, law, or actions;
- e) embargoes or blockades in effect on or after the date of this Agreement;
- f) national or regional emergency;
- g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and
- h) other similar events beyond the control of the Impacted Party.

The Impacted Party shall give notice within seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of seven (7) days following written notice given by it under this Section 18, the other party may thereafter terminate this Agreement upon seven (7) days' written notice.

## §19 Assignment

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. Seller may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of Seller's assets without Buyer's consent.

## §20 Relationship of the Parties

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

## §21 No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

## §22 Governing Law

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California

## §23 Submission to Jurisdiction

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the City of Los Angeles and County of Los Angeles, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

## §24 Notices

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only

- a) upon receipt of the receiving party, and
- b) if the party giving the Notice has complied with the requirements of this Section.

## §25 Severability

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## §26 Survival

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.