

## TERACAI TERMS AND CONDITIONS OF SALE

ALL ORDERS PLACED WITH TERACAI ("SELLER") ARE SUBJECT TO THESE TERMS AND CONDITIONS ("TERMS AND CONDITIONS") AND ALL ADDITIONAL TERMS AND CONDITIONS PRESENTED ON OR ACCOMPANYING A SELLER QUOTE OR RELATED DOCUMENT, INCLUDING, BUT NOT LIMITED TO, MASTER SERVICE AGREEMENTS, STATEMENTS OF WORK OR CREDIT APPLICATIONS. SALE OF ANY PRODUCTS OR SERVICES BY SELLER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. ANY ACCEPTANCE OF SELLER'S OFFER IS EXPRESSLY LIMITED TO ACCEPTANCE OF THESE TERMS AND CONDITIONS AND SELLER EXPRESSLY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER.

ANY TIME THERE IS A CONFLICT BETWEEN THESE TERMS AND CONDITIONS AND ANY TERMS AND CONDITIONS OR ADDITIONAL PROVISIONS PROPOSED BY BUYER OR CONTAINED IN BUYER'S PRINTED FORMS, INCLUDING BUYER'S PURCHASE ORDERS, THESE TERMS AND CONDITIONS SHALL SUPERSEDE AND CONTROL.

THESE TERMS AND CONDITIONS REPRESENT THE ENTIRE AGREEMENT OF THE PARTIES AS TO ANY ORDER PLACED BY BUYER AND ACCEPTED BY SELLER ("ACCEPTED ORDER"), EXCEPT WHERE SELLER HAS AGREED TO OTHER OR ADDITIONAL TERMS AND CONDITIONS IN WRITING BY ITS AUTHORIZED AGENT.

**1. ACCEPTANCE.** All orders are subject to credit approval and written (either printed or electronic) acceptance or acknowledgement by Seller at Seller's home office, in its sole discretion, regardless of the location of Buyer or Seller's sales representative.

**2. PRICE.** Unless otherwise stated, the price is for Product only and does not include Services and prices are quoted as determined by Seller in US Dollars and will remain open for thirty (30) days from Quotation date. Errors or omissions in price are subject to correction. Freight, customs fees, tariffs, VAT, duties, freight forwarder fees, consular fees, taxes, however designated and all other costs after shipment are Buyer's obligations. Seller will bill Buyer for all applicable taxes, unless Buyer provides an exemption certificate, and provided that, if Seller is not registered to collect and remit sales and/or use taxes in the jurisdiction where product is shipped at Buyer's request, then Buyer hereby covenants and agrees that it shall pay and remit all applicable VAT, sales and/or use taxes to the proper taxing authority and shall indemnify Seller from any liability related to the payment, underpayment or nonpayment thereof.

**3. PAYMENT.** All payments shall be made in US Dollars via check, ACH or other acceptable electronic means. Unless otherwise agreed to in writing by Seller, payment terms are net thirty (30) days from the date of Seller's invoice. All invoices will be rendered electronically as shipments are made, Seller shall not be responsible for providing hard copies of invoices, shipping receipts or any other documentation to Buyer. Credit card charges exceeding Five Thousand Dollars (\$5,000) may be subject

to the current market fees. Seller shall impose late charges of 1.5% per month, or the maximum permitted by law, on all outstanding balances.

**4. SHIPMENT/SERVICE.** Shipment and service dates are estimated in good faith but are not guaranteed by Seller. After an order is accepted, Buyer may not change shipment and services dates without Seller's written consent. Seller will not be held liable for any late delivery charges. Shipments will be made F.O.B. origin prepaid and add, Syracuse, New York or such other location as Seller shall select. Accepted Orders may be tendered in partial shipments at Seller's discretion.

**5. FORCE MAJEURE/DELAYS IN DELIVERY OR SERVICES.** Seller shall not be liable for a failure to perform that arises from causes or events beyond its or third parties' reasonable control and without its fault or negligence, and may terminate an Accepted Order in whole or in part upon such a cause or event.

**6. TITLE, RISK OF LOSS AND INSURANCE.** Title, risk of loss and insurance responsibilities pass to Buyer upon delivery of products by Seller to a shipping agent or carrier.

#### **7. CANCELLATIONS AND CHANGES.**

(a) Cancellation of any Accepted Order, in whole or in part, is subject to Seller's receipt of Buyer's written notice of such cancellation prior to any product being shipped or released for shipment. In the event of any such cancellation, Buyer shall be responsible for any reasonable costs and expenses (including, without limitation, expenses and commitments to Seller's suppliers and subcontractors) incurred by Seller prior to Seller's receipt of the cancellation notice. Orders for custom, special or non-standard products and/or services are final and non-cancelable.

(b) Seller reserves the right to cancel an Accepted Order in whole or in part if, in Seller's judgment, Buyer's financial condition does not justify the terms of payment specified.

(c) Each party may at any time propose changes to an Accepted Order. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe changes in Product type, quantity and schedule for delivery, and the resulting changes in price and other provisions, as agreed.

(d) It shall be acceptable and not considered a change if Seller delivers a Product that bears a different, superseding or new part or version number compared to the part or version number listed in the Accepted Order.

**8. INSPECTION.** Seller, or its representative, will inspect products prior to shipment in accordance with its normal practices.

## **9. EXPORT LICENSES AND PERMITS.**

**(a)** Seller warrants that it is in compliance with applicable U.S. export regulations. Buyer shall be responsible for procuring all applicable import licenses and complying with all import regulations.

**(b)** Buyer acknowledges that the export, re-export, or import into any other country of commodities, technical data, or software ("Controlled Items") purchased from Seller is subject to the export/import control laws and regulations of the U.S., and Buyer warrants that it shall notify Seller if it intends to re-export or re-sell Controlled Items. Buyer shall comply with all applicable export/import control laws and regulations. In particular, Buyer certifies that it will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any Controlled Items to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the U.S. Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority. Buyer certifies that it will not use any Product purchased from Seller in relation to nuclear, biological or chemical weapons or missile systems capable of delivering same or the development of any weapons of mass destruction. Buyer certifies that it is not an embassy, agency or subdivision of a non-U.S. government. Seller reserves the right to require Buyer to sign an Export Statement of Assurance, and to provide further details regarding Buyer's intentions for the Product (including final destination, intended end use and intended end user) prior to shipment. Buyer's failure to provide such assurance and information upon request may result in Seller's cancellation of any pending Quote or Order.

**(c)** Buyer acknowledges that it is Buyer's responsibility to obtain any license to export, re-export, import into any other country, or transmit any Controlled Items as may be required under any applicable export/import control laws or regulations. Buyer shall not export, re-export, import to any other country, or transmit any Controlled Items except in accordance with all applicable laws, and regulations.

**(d)** Buyer shall not give any Foreign Person (including Buyer's own non-U.S. employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Seller. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Seller may reasonably request. No consent granted by Seller in response to Buyer's request under this paragraph 9(d) shall relieve Buyer of its obligations to comply with the provisions of this Article 9 or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of this Article 9, nor constitute consent for Buyer to violate any provision of the Export Laws and Regulations.

**(e)** Buyer shall indemnify, defend and save harmless Seller from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including reasonable attorneys' fees, arising out of claims, suit, allegations or charges of Buyer's failure to comply with the provisions of this Article 9 and breach of the acknowledgements and certifications set forth in paragraphs 9(b), (c) and (d). Any failure of Buyer to comply with the requirements or any breach of the acknowledgements and certifications contained in this Article 9 shall be a material breach of these Terms and Conditions.

**10. PACKING.** Products will be packed or packaged for shipment in accordance with Seller's standard commercial practices.

**11. TECHNICAL DATA.** All Seller's drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, and all other information, technical or otherwise which was developed, made or supplied by Seller in the sale of any product or the performance of any service sold, rendered or licensed hereunder will be and remain the sole property of Seller and no license is implied by the sale.

**12. U.S. GOVERNMENT CONTRACT PROVISIONS.**

**(a)** This Article 12 applies only if an Accepted Order is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government.

**(b)** Buyer agrees that all Products and Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to an Accepted Order, the country of origin of Products is unknown unless otherwise specifically stated by Seller in an Accepted Order. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). Buyer represents and agrees that an Accepted Order is not funded in whole or in part by American Recovery Reinvestment Act funds unless otherwise specifically stated in an Accepted Order. The version of any applicable FAR clause listed in this Article 12 shall be the one in effect on the effective date of an Accepted Order.

**(c)** If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the price agreed to in an Accepted Order.

**(d)** If Buyer is procuring the Products or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the price agreed to in an Accepted Order.

**13.ASSIGNMENT.** Buyer shall not delegate any duties, nor assign any rights or claims under an Accepted Order, or for breach thereof, without Seller's prior written consent, any such attempted delegation or assignment shall be void. Further, these Terms and Conditions and any agreement subject to these Terms and Conditions may not be assigned by either Party without the prior written consent of the other Party unless (i) otherwise provided for in these Terms and Conditions or (II) assigned to a corporation controlled by, in control of or under common control of the assigning Party. In the event of (ii) above, thirty (30) days prior written notice of said assignment must be provided to the non-assigning Party

**14.CONTINUOUS PERFORMANCE.** Buyer shall not stop, suspend or slow performance or payment under an Accepted Order because of any disputes between Seller and Buyer.

**15.PRODUCT RETURNS.** Immediately upon Buyer's receipt of any goods shipped hereunder, Buyer shall inspect the same and shall notify Seller in writing of any claims for shortages or damages. The shipment shall be deemed irrevocably accepted upon delivery unless notice is given pursuant to Seller's Product Return Policy in effect on the date of the return. See [www.teracai.com/TeracaiProductReturnPolicy](http://www.teracai.com/TeracaiProductReturnPolicy). The terms of this policy are incorporated into these Terms and Conditions as if set forth herein.

**16.SERVICES.**

**(a)** Buyer may order Services from or through Seller from time to time. Third parties may provide certain Services, including, but not limited to, extended warranty service by manufacturers or third party vendors (collectively, the "Third Party Vendor"), which are sold by Seller as a distributor or sales agent ("Third Party Services").

**(b)** Buyer shall consider the Third Party Vendor to be the contracting party for all Third Party Services. The Third Party Vendor shall be the party responsible for providing Third Party Services to Buyer, and the Third Party Vendor shall be solely responsible to Buyer for any loss, claims or damages arising from or related to the provision of such Third Party Services. Buyer and Buyer's Affiliates (defined below) hereby release Seller and Seller's Affiliates (defined below) from any and all claims arising from or relating to the purchase or provision of any such Third Party Services. Any amounts, including, but not limited to, taxes, associated with Third Party Services which may be collected by Seller will be collected solely in the capacity as an independent sales agent. "Affiliate" means, with respect to a party, an entity that controls, is controlled by, or is under common control with such party.

**(c)** The terms of any contract for Professional Services from SELLER will be contained in a Master Services Agreement, these Terms and Conditions and one or more separate agreements (each, a "Related Agreement"), including but not limited to, a Statement of Work or Change Order. Where such Services are ordered through a Master Services Agreement and associated Statements of Work, each Statement of Work shall incorporate these Terms and Conditions and constitute a separate agreement with respect to the Services performed. In the event of a conflict between

any term or condition of the above referenced Agreements and these Terms and Conditions, the conflict will be resolved by giving precedence in the following order: (i.) the Change Order; (ii.) the Statement of Work; (iii.) the Master Services Agreement; and (iv.) these Terms and Conditions.

**(d)** Buyer shall perform any specific Buyer's duties set forth in any applicable Statement of Work, and Buyer further agrees to cooperate with Seller in connection with performance of the Services by providing: (i) timely responses to Seller's inquiries and requests for approvals and authorizations, (ii) access to any information or materials reasonably requested by Seller which are necessary or useful as determined by Seller in connection with providing the Services, including, but not limited to, physical and computer access to Buyer's computer systems, and (iii) all Required Consents necessary for Seller to provide the Services. "Required Consents" means consents or approvals required to give Seller, its Affiliates, and its and their subcontractors the right or license to access, use and modify all data and third party products. Buyer acknowledges and agrees that the Services are dependent upon the completeness and accuracy of information provided by Buyer and the knowledge and cooperation of the agents, employees or subcontractors engaged or appointed by Buyer who are selected by Buyer to work with Seller.

**(e)** Seller will follow all reasonable Buyer security rules and procedures, as communicated in writing by Buyer to Seller from time to time.

**(f)** Seller, through its employees or representatives, may perform the Services at Buyer's place of business, at Seller's own facilities or any other location Seller and Buyer deem appropriate. When the Services are performed at Buyer's premises, Seller shall attempt to perform such Services within Buyer's normal business hours unless otherwise jointly agreed to by the parties. Buyer shall also provide Seller access to Buyer's facilities and staff and any other Buyer resources (and when the Services are provided at another location designated by Buyer, the staff and resources at such location) that Seller determines are useful or necessary for Seller to provide the Services. When the Services are provided on Buyer's premises or at another location designated by Buyer, Buyer agrees to maintain adequate insurance coverage to protect Seller and Buyer's premises and to indemnify and hold Seller and its representatives and Affiliates, and its and their agents and employees harmless from any loss, cost, damage or expense (including, but not limited to, attorneys' fees and expenses) arising out of any product liability, death, personal injury or property damage or destruction occurring at such location in connection with the performance of the Services, other than solely as a result of Seller's gross negligence or willful misconduct.

**(g)** When Product is procured from Seller in which Services will be performed prior to shipping to Buyer's location, Buyer shall accept ownership of all Product delivered to the Seller's facility at the time Seller's engineering resources begin Services as outlined in an executed Statement of Work. All Product will be invoiced to the Buyer at that time in accordance with the Payment provisions referenced in Article 3 of these Terms and Conditions.

**17. SETOFFS.** Buyer shall have no right of setoff and shall have no right to self-help deductions against amounts due to Seller.

**18. NO AUDITS.** Buyer shall have no right to audit Seller's books and records, or to review Seller's financial statements, provided that Seller shall, upon reasonable request, provide Buyer with electronic information directly related to Buyer's account with Seller and Buyer's transactions with Seller for a period not to exceed the twelve (12) months prior to such request.

**19. BUYER DEFAULT OR INSOLVENCY.** In the event of a breach by Buyer of any of these Terms and Conditions that is either not fully cured within seven (7) days after issuance to Buyer of written notice by Seller, or where Seller judges in good faith that due to an emergency or other circumstances that a cure cannot be accomplished or cannot be fully accomplished within seven (7) days, or in the event of any proceedings by or against Buyer in bankruptcy or insolvency, or for appointment of any receiver or trustee, or any general assignment for the benefit of creditors, then Seller, in addition to any other remedy provided it by applicable law or in equity, or other right reserved to it elsewhere in these Terms and Conditions, and without any liability to Buyer on account thereof, and with or without terminating this Accepted Order, may withhold any further shipment(s) to Buyer; and Buyer shall be liable to pay to Seller any damages incurred by Seller as a result thereof. Buyer agrees that a breach by Buyer of any other agreement between Buyer and Seller, whether or not related to this Accepted Order or the goods sold hereunder, constitutes a material breach under this Accepted Order, thereby entitling Seller to assert all its rights and remedies hereunder.

**20. LIMITED WARRANTY:**

(a) Seller does not manufacture all of the products it sells. If other manufacturers' product(s) is purchased by Seller and resold to Buyer then such Products will be limited to that manufacturers' warranty. Seller assumes no warranty liability for other manufacturers' product furnished to Buyer.

(b) Seller warrants that Services performed by Seller shall be performed in a good and workmanlike manner.

(c) No agent, distributor, or representative is authorized to make any warranties on behalf of Seller or to assume for Seller any other liability in connection with any Seller product or service, unless provided hereunder.

**21. DISCLAIMER OF WARRANTY.** Buyer understands and agrees as follows:

THE ABOVE WARRANTY REPLACES ALL OTHER WARRANTIES AND/OR REPRESENTATIONS, EXPRESSED OR IMPLIED & ALL OTHER OBLIGATIONS OR LIABILITIES OF SELLER, INCLUDING ANY WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES AND REPRESENTATIONS ARE DISCLAIMED, EXCLUDED AND REJECTED BY SELLER. THE FOREGOING WILL BE THE SOLE AND EXCLUSIVE REMEDY WHETHER IN CONTRACT, TORT, OR OTHERWISE, & SELLER WILL NOT

BE LIABLE FOR INJURIES OR DAMAGES CAUSED BY ANY NEGLIGENCE OF BUYER. THIS LIMITATION APPLIES TO ALL PRODUCTS AND THE PERFORMANCE OR NONPERFORMANCE OF ALL SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY RELATING TO THIRD PARTY SERVICES AND ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH IN THESE TERMS AND CONDITIONS FAILS OF ITS ESSENTIAL PURPOSE.

## **22. LIMITATION OF REMEDIES.**

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, OR REQUIRED TO INDEMNIFY BUYER FROM, ANY LIABILITIES, LOSSES, INJURY, PERSONAL INJURY, DEATH, DAMAGES, COSTS, EXPENSES, CAUSES OF ACTION, SUITS JUDGMENTS, AND CLAIMS BY OR ON BEHALF OF ANY PERSON, CORPORATION, ENTITY, OR GOVERNMENTAL BODY RESULTING FROM BUYER'S USE OF PRODUCTS PURCHASED FROM SELLER OR FROM SERVICES PROVIDED BY SELLER.

(b) IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSSES EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

(c) Buyer shall be solely responsible for daily back-up and other protection of its data and software against loss, damage or corruption. Buyer shall be solely responsible for reconstructing data (including but not limited to data located on disk files and memories) and software that may be lost, damaged or corrupted during the performance of Services. SELLER, ITS AFFILIATES, AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND AGENTS ARE HEREBY RELEASED AND SHALL CONTINUE TO BE RELEASED FROM ALL LIABILITY IN CONNECTION WITH THE LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE, AND BUYER ASSUMES ALL RISK OF LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE SERVICES.

**23. LIMITATION OF LIABILITY.** In the event that Seller is, for any reason, deemed liable to the Buyer, the amount of damages recoverable by Buyer shall not exceed Buyer's actual damages as limited by these Terms and Conditions and provided that Seller shall not be required to pay to Buyer actual damages in excess of the total fees actually paid by the Buyer to Seller under any Accepted Order during the twelve (12) month period immediately preceding the event giving rise to Seller's alleged liability.

## **24. INTELLECTUAL PROPERTY AND INDEMNIFICATION.**

(a) Seller is not the owner of any patent, copyright, trademark or any other intellectual property related to Products manufactured by others that is sold hereunder and Seller does not transfer or grant any ownership right, license or any other right to use the intellectual property of others, unless otherwise provided in the manufacturer's



terms and conditions.

**(b)** Seller disclaims all warranties related to the Intellectual Property and specifically disclaims any obligation or duty to indemnify, defend or hold harmless Buyer from and against any claim, liability, loss, damage, settlement, penalty, cost or expense made against or sustained by Buyer arising from any claim that Products sold hereunder infringe, misappropriate or violate any third party's intellectual property rights.

**(c)** The sale of Products, related software and/or provision of services hereunder does not convey any express or implied license under any patent, copyright, trademark or other proprietary rights owned or controlled by Seller, whether relating to the products sold or any manufacturing process or other matter. All rights under any such patent, copyright, trademark or other proprietary rights are expressly reserved by Seller.

**(d)** Buyer agrees not to infringe, directly or indirectly, any patents, trademarks or copyrights of Seller, its subsidiaries, or of any third party, with any combination or system incorporating a Product sold hereunder.

**(e)** Buyer shall indemnify, defend and hold harmless Seller from and against any claim, liability, loss, damage, settlement, penalty, costs or expenses, including reasonable attorneys fees, made against or sustained by Seller arising from any claim resulting from: (1) Buyer's misuse of Products or incorporation of Products sold hereunder in any item produced or manufactured by Buyer or a third party; (2) Seller's design or manufacture of Products to specifications provided by Buyer, and/or (3) Buyer's Infringement of any third party's intellectual property rights.

**(f)** All contents of the Seller's website, advertising and marketing materials are protected by copyright and trademark laws. All rights reserved. For further information see: [www.teracai.com/LegalDisclaimer](http://www.teracai.com/LegalDisclaimer).

**(g)** THE FORGOING PROVISIONS OF ARTICLE 24 STATE THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT, COPYRIGHT AND/OR TRADEMARK INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

**25. CONFIDENTIALITY.** The terms of all Accepted Orders shall constitute confidential information, and, except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party the terms of any Accepted Order or any other information of the other party that it reasonably knows to be confidential.

**26. NO BUSINESS ASSOCIATE RELATIONSHIP.** Regardless of Buyer's status as a health care provider or Buyer's possession of protected health information, in no event shall an Accepted Order create a relationship between Seller and Buyer whereby Seller may be deemed a Business Associate of Buyer as that term is used in relation to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the related

regulations. Seller hereby expressly disclaims any obligation or duty to protect a Buyer's patients' rights or to maintain confidential and secure any protected health information. Nothing in these Terms and Conditions shall be construed to permit Seller to have access to, retain or use any protected health information of any Buyer.

**27. INTERPRETATION, SEVERABILITY.** These Terms and Conditions shall be construed and interpreted as if drafted jointly by Buyer and Seller. In the event any portion of these Terms and Conditions is found to be unenforceable, all other portions shall remain enforceable to the fullest extent allowable by law. Any omitted provision legally required for enforceability hereof shall be deemed inserted where required or in place of any conflicting provision.

**28. NOTICE.** All notices or other communications required to be given under these Terms and Conditions shall be in writing and shall be deemed to have been given upon personal delivery, certified or registered mail, return receipt requested, or by overnight courier with proof of delivery to the parties at the addresses set forth in an Accepted Order, unless a different address is designated in writing.

**29. WAIVER.** Failure of Seller to insist upon strict performance of any terms or conditions in this document shall not be deemed a waiver of any subsequent breach or default of these Terms and Conditions. No waiver will be valid unless in writing and no waiver granted will release Buyer from subsequent strict compliance herewith.

**30. SELLER'S RIGHT TO SUBCONTRACT.** Seller reserves the right to subcontract any obligation hereunder.

**31. GOVERNING LAW.** All Accepted Orders shall be a contract made in the State of New York, U.S. Accepted Orders shall be construed and enforced in accordance with the laws of the State of New York without giving effect to its conflict of laws provisions. Any dispute regarding an Accepted Order shall be resolved in a court of competent jurisdiction in the County of Onondaga, State of New York, U.S., and Buyer hereby expressly consents to the personal jurisdiction of any court in the County of Onondaga, State of New York, U.S. The United Nations Convention on the International Sale of Goods shall not apply to these Terms and Conditions or any related agreement or document. Any claim, except for nonpayment, must be brought within one (1) year of product shipment or completion of services. THE PARTIES AGREE TO WAIVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY LEGAL DISPUTE.

**32. NO CLASS ACTIONS.** NEITHER BUYER NOR SELLER SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER BUYERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

**33. ATTORNEY'S FEES.** If any litigation is commenced arising from an Accepted Order, the prevailing party shall be entitled to its costs, expenses and reasonable attorney's fees.

**34. SURVIVAL.** The following Articles shall survive termination or cancellation of an Accepted Order: 9, 12, 16, 17, 18, 20-26, 31-34 and 38.

**35. MODIFICATION.** Seller reserves the right to change these Terms and Conditions at any time by publishing revised Terms and Conditions on Seller's website. The revised Terms and Conditions shall immediately become effective for all sales made after such publication. Buyers can find the latest version of these Terms and Conditions at [www.teracai.com/TeracaiTerms](http://www.teracai.com/TeracaiTerms).

**36. HEADINGS.** The section headings in these Terms and Conditions are solely for reference purposes.

**37. COUNTERPARTS.** Any agreement subject to these Terms and Conditions may be executed in any number of counterparts. Delivery by facsimile, or other electronic means, of an executed signature page to any such agreement shall be effective as delivery of a manually signed original or counterpart.

**38. INDEPENDENT ENTITIES.** None of the provisions of these Terms and Conditions are intended to create nor shall be deemed or construed to create any relationship between the Parties other than that of independent entities contracting with each other solely for the purpose of affecting the provisions of these Terms and Conditions and any agreement subject to these Terms and Conditions. Neither Party nor any of its employees or agents will be construed to be the agent, the employer or representative of the other Party. Neither Party has any expressed or implied rights nor any authority to assume or create any obligation or responsibility on behalf of or in the name of the other Party, except as otherwise set forth in these Terms and Conditions.