



**INTELLEX CORPORATION  
TERMS AND CONDITIONS OF SALE  
EFFECTIVE: OCTOBER 1, 2011**

**1. SCOPE**

The terms and conditions of sale set forth herein (“*Terms and Conditions*”) apply to all quotations issued and purchase orders accepted by Intellex Corporation (“*Intellex*”) for the sale of its products (“*Products*”), except in the case that Intellex and buyer (“*Buyer*”) have executed a written agreement that supersedes these Terms and Conditions. To the extent the Products contain or consist of software or firmware in any form (“*Software*”), such Software is licensed, not sold, solely in accordance with the terms and conditions referenced in Section 11. Terms such as “sell” and “purchase”, as used in these Terms and Conditions, apply only to the extent the Products consist of items other than Software. These Terms and Conditions will apply whether or not they are enclosed with the Products sold hereunder.

**2. ORDERING**

If Buyer desires to purchase Products from Intellex, Buyer will submit a written purchase order signed by an authorized representative of Buyer. Each purchase order will include at least the following information: (1) Product name; (2) Product identifier (part number, sku #); (3) quantity; (4) unit price; (5) requested delivery dates; and (6) any requested special shipping terms. No such order will be binding on Intellex unless and until Intellex accepts Buyer’s order and sends Buyer a written order confirmation (“*Order Confirmation*”), which will confirm the quantity of Products purchased and the selling price, and will specify a shipment date (“*Order Confirmation Shipment Date*”). Intellex’s acceptance of Buyer’s order is expressly conditioned on Buyer’s unconditional assent to these Terms and Conditions in lieu of any terms and conditions in Buyer’s order or in any other Buyer communication. Intellex hereby rejects any terms or conditions in Buyer’s order or in any other Buyer communication that conflict with or that purport to add to or modify these Terms and Conditions. All such terms and conditions will be deemed stricken and will be null and of no effect.

**3. ORDER CANCELLATION AND RESCHEDULING**

Cancellation of an order is permitted only if Intellex receives Buyer’s cancellation notice at least ninety (90) days prior to the Order Confirmation Shipment Date. Buyer may reschedule an order, provided that Intellex receives Buyer’s written request to reschedule no less than thirty (30) days prior to the Order Confirmation Shipment Date and Buyer’s requested shipment date is no more than ninety (90) days after the Order Confirmation Shipment Date. Buyer may only reschedule an order one (1) time. Buyer may not cancel or reschedule partial orders, special orders, or orders for custom or obsolete products. Notwithstanding the above, for Buyers who are part

of Intellex' Partner Program, orders may not be cancelled nor rescheduled if Buyer's minimum annual purchase obligations to Intellex would be avoided.

#### **4. SHIPMENT AND DELIVERY**

A. For orders within the U.S., Intellex will ship the Products FOB Intellex's point of shipment. For orders outside the U.S., Intellex will ship the Products Ex-Works (Incoterms 2000) Intellex's point of shipment. Unless otherwise agreed in writing, Intellex will pack the Products in accordance with its standard practices. Unless Buyer provides Intellex with specific instructions, Intellex will select the carrier. Buyer will be responsible for all freight, packing, insurance and other shipping-related costs and expenses. Title to the Products (except to the extent that the Products consist of Software) and risk of loss will pass to Buyer upon Intellex's delivery of the Products to the carrier.

B. Buyer acknowledges that all scheduled shipment dates, including the Order Confirmation Shipment Date, are estimates only. Intellex will make reasonable efforts to meet the scheduled shipment dates, but in no event will Intellex be liable for any loss, damage, or penalty resulting from any delay in shipment or delivery, nor will the carrier be deemed an agent of Intellex. Intellex will have the right to ship the Products in installments and separately invoice Buyer for such installments. Intellex will have the right to allocate its available inventory of the Products among its buyers in such manner as Intellex deems equitable. Intellex will have the right to delay or suspend shipment of the Products if Buyer fails to make any payment as provided in these Terms and Conditions or if Buyer fails to meet Intellex's credit or financial requirements.

#### **5. INSPECTION AND ACCEPTANCE**

Buyer will have a period of ten (10) days following receipt of a shipment of the Products to inspect the Products and must accept or reject them in writing within such period. If Buyer rejects the Products, Buyer must provide Intellex with the specific reasons for such rejection and provide Intellex a reasonable opportunity to inspect the Products. If Buyer fails to notify Intellex in writing of its acceptance or rejection within such ten (10) day period, then the Products will be deemed accepted. Buyer may return Products to Intellex only upon Intellex's prior written authorization.

#### **6. PRICE**

The prices for the Products will be as specified in the applicable Order Confirmation. Prices are stated in U.S. dollars and are exclusive of all applicable sales, use, excise, withholding, value-added and other taxes, duties and charges (collectively, "**Taxes**"). Unless Buyer timely provides Intellex with a tax-exemption certificate acceptable in the appropriate taxing jurisdiction, Intellex will include all Taxes as separate items on Intellex's invoice, which will be payable by Buyer pursuant to Section 7 hereof. Buyer will indemnify and hold Intellex harmless from and against any liabilities, interest, penalties or fees assessed against Intellex arising from any failure by Buyer to pay any Taxes.

## **7. PAYMENT TERMS**

All invoices issued by Intellex will be due and payable thirty (30) days from the date of the invoice. Intellex reserves the right, based on Intellex's assessment of Buyer's financial condition or payment record, to require payment in advance or to require Buyer to obtain an irrevocable letter of credit. All payments will be made in U.S. dollars, free of any currency controls or other restrictions. All amounts not paid when due will accrue interest at the lower of 1.5% per month or the highest rate permissible by applicable law. Buyer may not setoff against Intellex's invoices any amounts that Buyer claims are due to it. Intellex hereby reserves and Buyer hereby grants to Intellex a purchase money security interest in the Products sold and the proceeds thereof until Buyer has paid the total amount invoiced by Intellex for the Products. Buyer agrees to execute any financing statements or other documents as Intellex requests to protect Intellex's security interest.

## **8. LIMITED WARRANTY AND DISCLAIMERS**

- A. Intellex warrants that, for a period of (a) two (2) years from the date of manufacture for all RFID tags and chip-level products, (b) one (1) year from the date of shipment for all RFID readers, antennas, and other hardware products, and (c) ninety (90) days for all software, firmware and other computer code, the Products will be reasonably free from defects in materials and workmanship under normal use. As Intellex's sole liability and Buyer's sole and exclusive remedy for any breach of the limited warranty set forth herein, Intellex will, at its option and expense, repair or replace any Product returned to Intellex during the warranty period that does not comply with such warranty, as confirmed by Intellex. Replacement Products will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. All Products that are replaced become the property of Intellex. Intellex shall not be responsible for Buyer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Intellex for repair, whether under warranty or not. Buyer must obtain a Return Materials Authorization number from Intellex prior to returning any Products to Intellex and Buyer will bear the cost of returning Products to Intellex. If Intellex determines that a Product returned by Buyer complies with the warranty set forth herein, then Buyer will also bear Intellex's cost of shipping the Product back to Buyer.
- B. Intellex will have no obligation to the extent that any failure of a Product to comply with the limited warranty set forth in subsection (a) above results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Intellex's published specifications or user manual; (iii) modifications, alterations or repairs to the Product made by a party other than Intellex or a party authorized by Intellex; (iv) any failure by Buyer or a third party to comply with environmental and storage requirements for the Product specified by Intellex, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any third-party devices or products that have not been provided or recommended by Intellex.

C. THE LIMITED WARRANTY SET FORTH HEREIN IS IN LIEU OF, AND INTELLEFLEX SPECIFICALLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM INTELLEFLEX OR ELSEWHERE, WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS. BUYER ACKNOWLEDGES AND AGREES THAT INTELLEFLEX MAKES NO WARRANTY OR GUARANTEE THAT THE INTELLEFLEX PRODUCTS WILL OPERATE IN THE COMBINATIONS OR APPLICATIONS THAT BUYER OR ITS END USERS SELECT, THAT THE OPERATION OF THE INTELLEFLEX PRODUCTS WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ALL SOFTWARE OR FIRMWARE ERRORS WILL BE CORRECTED. INTELLEFLEX WILL HAVE NO LIABILITY FOR ANY PERSONAL INJURY OR DAMAGES TO ANY COMMODITIES, GOODS OR PRODUCTS ARISING FROM ANY APPLICATION OR USE OF INTELLEFLEX PRODUCTS.

## **9. INDEMNITY**

- A. Intellex will defend or settle, at its expense, any action or suit brought against Buyer to the extent based on a third-party claim that any Product provided by Intellex to Buyer pursuant to these Terms and Conditions infringes a United States patent or any copyright or misappropriates any trade secret, and Intellex will pay any damages awarded in final judgment against Buyer or agreed to in settlement by Intellex that are attributable to any such claim, provided that Buyer: (i) notifies Intellex promptly in writing of the claim; (ii) gives Intellex sole control of the defense and any related settlement of the claim; and (iii) gives Intellex, at Intellex's expense, all reasonable information, assistance and authority in connection with the defense and settlement of the claim. Intellex will not be bound by any settlement or compromise that Buyer enters into without Intellex's express prior written consent.
- B. If a Product becomes, or in Intellex's opinion be likely to become, the subject of a claim against Buyer, as specified in subsection (a) above, then Intellex may, at its sole option and expense: (i) procure for Buyer the right to continue using the Product; (ii) replace or modify the Product to avoid the claim; or (iii) if options (i) and (ii) cannot be accomplished despite Intellex's reasonable efforts, then Intellex may accept return of the Product from Buyer and grant Buyer credit for the price of the Product as depreciated on a straight-line two (2) year basis for all RFID tags and chip-level products and five (5) year basis for all other products, commencing on the date of receipt by Buyer of such Product.
- C. Intellex will have no obligation under this Section 9 for any infringement or misappropriation claim of any kind to the extent that it results from: (i) the combination, operation or use of a Product with or in equipment, products, or

processes not provided by Intellex; (ii) modifications to a Product not made by or for Intellex; (iii) Buyer's failure to use an updated or modified Product provided by Intellex; (iv) Intellex's compliance with Buyer's designs, plans or specifications; or (v) Buyer's use of a Product other than in accordance with Intellex's published specifications or user manual. The foregoing clauses (i) to (v) are referred to collectively as "*Indemnity Exclusions*".

- D. THE FOREGOING PROVISIONS OF THIS SECTION 9 SET FORTH INTELLEX'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATIONS AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY KIND.
- E. Buyer will defend or settle, indemnify and hold Intellex harmless from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third-party claim based on or otherwise attributable to an Indemnity Exclusion.

#### **10. LIMITATIONS ON LIABILITY**

- A. IN NO EVENT WILL INTELLEX BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, USE, PROFITS, DATA, OR GOODWILL) OR COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE PURCHASE, SALE, USE, OPERATION OR PERFORMANCE OF THE PRODUCTS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT INTELLEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. INTELLEX AND BUYER HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THESE TERMS AND CONDITIONS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL INTELLEX'S LIABILITY TO BUYER ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE ACTUAL AMOUNT PAID TO INTELLEX BY BUYER FOR THE PRODUCT THAT GIVES RISE TO THE CLAIM.
- B. Intellex Products are not designed for use in life support and/or safety equipment where malfunction of the product can result in personal injury or death. Your use or sale of Intellex Products for use in life support and/or safety applications is at your own risk. You agree to defend and hold Intellex harmless from any and all damages, claims, suits or expenses resulting from such use.
- C. Buyer may seek Intellex' assistance in the installation of the Intellex Products, which assistance Intellex may provide in its sole discretion. Buyer agrees to defend and hold Intellex harmless from any and all damages, claims, suits, or

expenses resulting from injuries to person or property in connection with such installation.

- D. Intellex Products include wireless capabilities that have been designed and certified for use in particular countries and subject to certain limitations. Intellex makes no representation that the Products are appropriate or available for use in any particular location, or for any ongoing period of time. To the extent Buyer chooses to use the Products, Buyer does so at its own initiative and risk and is responsible for compliance with any applicable laws, including but not limited to applicable local laws governing the use of wireless products. At any time, Intellex may be required to remove or limit the use of a particular Product from a particular geographic market without notice or liability to Buyer.

## **11. SOFTWARE LICENSE**

- A. All Software is protected by intellectual property laws, including without limitation U.S. copyright law and international treaties. All Software is licensed, not sold, to Buyer. All Software whether embedded in chip-level products, tags, readers, or otherwise, is subject to these Terms and Conditions unless the Software is accompanied by a separate license agreement, in which case the terms and conditions of that separate license agreement shall control.
- B. Intellex grants to Buyer a nonexclusive, nontransferable license to use the Software, in executable form, solely as embedded in the Products, solely for Buyer's internal use. Buyer may not copy or modify the Software. Buyer acknowledges that the Software contains trade secrets of Intellex, and, in order to protect such trade secrets, Buyer agrees not to disassemble, decompile or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by law. Intellex reserves all rights and licenses in and to the Software not expressly granted to Buyer under this Agreement.
- C. Buyer acknowledges and agrees that Intellex may periodically collect and use data and related technical information stored on the Products to facilitate the provision of updates to the Software, Product support and other services. Intellex may use this information, as long as it is in a form that does not personally identify Buyer, to improve its products or to provide new services or technologies.
- D. Buyer either itself or with third parties may include or make available content, data, information, applications or materials that interact with the Software or rely on data therefrom (the "Third Party Content"). Buyer acknowledge and agrees that Intellex is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, quality or any other aspect of the Third Party Content. Intellex does not warrant or endorse and does not assume and will not have any liability or responsibility to Buyer or any other person for the Third Party Content.

## **12. GENERAL PROVISIONS**

- A. These Terms and Conditions will be governed and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. The parties disclaim application of the United Nations Convention on Contracts for the International Sale of Goods. Any legal action or proceeding arising under these

Terms and Conditions will be brought exclusively in the federal or state courts located in Santa Clara County, California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. Notwithstanding the foregoing, Intellex may commence proceedings in any other court of its choice of appropriate jurisdiction to obtain an injunction, specific performance or other equitable relief for protection of intellectual property rights.

- B. Buyer may not assign or transfer these Terms and Conditions, or any order accepted by Intellex hereunder, in whole or in part, by operation of law or otherwise, without Intellex's express prior written consent. Any attempt to do so, without Intellex's consent, will be null and of no effect.
- C. Intellex will not be responsible for any failure or delay in its performance under these Terms and Conditions due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, war, terrorism, riot, or acts of God.
- D. The failure by Intellex to enforce any provision of these Terms and Conditions will not constitute a waiver of future enforcement of that or any other provision. If for any reason a court of competent jurisdiction finds any provision of these Terms and Conditions invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms and Conditions will remain in full force and effect.
- E. These Terms and Conditions constitute the complete and exclusive agreement between Intellex and Buyer regarding its subject matter and supercedes all prior or contemporaneous quotations, agreements, communications or understandings, whether written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of these Terms and Conditions will be effective only if in writing and signed by duly authorized representatives of each party. Nothing in these Terms and Conditions will be construed as creating any legal partnership, joint venture, agency, or similar relationship between the parties.
- F. Buyer will not export or re-export, directly or indirectly, the Products, or any technical information related thereto, or any direct products thereof, to any destination or person prohibited or restricted by the export control laws and regulations of the United States, without the prior authorization from the appropriate governmental authorities.
- G. All software contained in the Products and any related documentation are "commercial items" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. To the extent that the Products are being acquired by or on behalf of the U.S. Government then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the software and any related documentation will be only those specified in these Terms and Conditions.
- H. All notices required or permitted to be given under these Terms and Conditions will be in writing and will be deemed given: (i) upon actual delivery, if made by personal service; (ii) three (3) days after mailing, if made by U.S. certified or registered mail; and (iii) one (1) business day after delivery to the courier or overnight delivery service, if made by courier or overnight delivery service. All notices will be

addressed as set forth on the purchase order or Order Confirmation, as the case may be, or to such other address as the party who is to receive the notice so designates by written notice to the other.