

Synapse Wireless, Inc. Terms and Conditions of Sale – US

1. ENTIRE AGREEMENT. Buyer agrees that all sales of goods and services (“Goods”) by Synapse Wireless, Inc. (“Seller”) to Buyer are governed by these Terms and Conditions of Sale (the “Terms and Conditions”) which supersede any other terms of Buyer. Buyer agrees that this Agreement will also govern all sales of Goods to Buyer by any Synapse Wireless, Inc. subsidiary, affiliate or division, in which case such subsidiary, affiliate or division will be the “Seller” under this Agreement (unless otherwise agreed in writing by such subsidiary, affiliate or division). Buyer acknowledges that these Terms and Conditions are subject to change from time to time and the parties agree that each sale of Goods will be governed by the version of Terms and Conditions of Sale - US available online at www.synapsewireless.com under the Terms and Conditions link at the time of acceptance by Seller of an order for such Goods. The Terms and Conditions and the order for Goods from Buyer and agreed by Seller (“Order) or other contract documents to which they apply (including any End User License Agreement provided in connection with the Goods) constitute the entire agreement between the parties with respect to Goods (“Agreement”). All references by Seller to Buyer’s specifications and similar requirements are only to describe Goods and work covered hereby and no warranties or other terms will have any force or effect. No other terms of Buyer, no modification, amendment or waiver to this Agreement and no cancellation, change or return of any Order under this Agreement will be binding on Seller until agreed in writing by Seller’s authorized representative. Buyer may not rely on any representation, promise or term not set forth herein and Seller expressly objects to and rejects all terms not contained in this Agreement. Seller’s acceptance of Orders, whether oral or written, and/or its delivery of Goods to Buyer is based on the express condition that Buyer agrees to all of these Terms and Conditions.

2. QUOTATIONS. Where this Agreement is used by Seller to place a bid or provide a quote, Seller’s quotation is for prompt acceptance and Seller may change and/or withdraw without notice. Buyer’s prompt acceptance of the quotation is a material term of the bid and any subsequent agreement. In cases where freight allowance is included in the quotation, Buyer is liable for any rate increase and/or additional expense over the calculated allowance resulting from compliance with Buyer’s shipping instructions.

3. DELIVERY. Delivery terms are FCA Seller’s dock (Incoterms® 2010) unless otherwise stated on each Order. All Orders must include Buyer’s address and are assumed to authorize immediate release upon ready-to-ship status unless otherwise specified in writing. All shipping dates are approximate; production will not begin until receipt by Seller of complete manufacturing, shipping, and credit information. Tender of delivery is deemed to occur at the earliest of (A) acceptance of shipment by designated shipper, (B) allocation of Goods to Buyer at location other than Seller’s location or (C) delivery to Buyer’s representative or designee. Buyer agrees to provide Seller with defined shipping instructions within seven (7) business days following receipt of packing list provided by Seller. Title to Goods will pass to Buyer on tender of delivery, subject to Seller’s right to stop Goods in transit and to any interest of Seller reserved to secure Buyer’s payment or performance to Seller, even if freight is included or prepaid. If Seller holds Goods at Buyer’s instructions or because Buyer has failed to supply shipping instructions or because Seller, in its sole discretion, determines that any part of Goods should be held for Buyer’s account, Seller may invoice Buyer for the Goods as well as for storage. Storage fees will be at Seller’s standard rate per pallet, per day stored. Goods invoiced and held at any location for whatever reason will be at Buyer’s risk and Seller may charge for (but is not obligated to carry) insurance. If Buyer fails to provide shipping instructions, Seller may, at its option, ship the Goods to Buyer at the address specified in the applicable Order and invoice Buyer for the Goods. Buyer agrees to make payment of such invoice when due under this Agreement. Buyer will accept and pay for partial deliveries at the Agreement prices and terms. If Buyer declares or indicates an intention to not accept delivery, Seller may, at its option, give written notice to Buyer that Seller is ready and willing to deliver, and such notice will constitute a valid tender of delivery. Buyer must report any shortages in shipments within three (3) calendar days of receipt of the initial shipment. Buyer may not make any deduction from any payment due because of loss or damage to Goods in transit.

4. PRICES; PAYMENT. Prices are stated on the Order or invoice document and payment terms are “prepaid” unless credit is extended in Seller’s discretion. If credit is extended, payment terms are net thirty (30) days from date of invoice. Seller may make partial shipments and payment for that portion will be due as indicated on the Order or invoice document based on time of shipment. Seller’s prices do not include sales, use, excise or other similar taxes and Buyer agrees to pay the amount of any present or future such tax in addition to the price specified in each Order, unless Buyer, at the time of sale, provides Seller with all tax-exemption certificates required by taxing authorities. If Seller has any cause to question Buyer’s ability to perform, Seller may

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demand such assurances of Buyer's performance as Seller deems necessary in its discretion, including payment in advance for all shipments. If (A) Buyer fails to provide Seller with such assurance within ten (10) calendar days of Seller's demand, or (B) Buyer is declared bankrupt or insolvent or any proceeding is brought against Buyer, voluntarily or involuntarily, under any bankruptcy or insolvency laws, or (C) Buyer fails to make payment for Goods when due, Seller may suspend its performance, cancel any Order then outstanding, receive reimbursement for its reasonable and proper cancellation charges and collect any sums due and owing, its reasonable cancellation charges and all damages resulting from Buyer's default. Additionally, if Buyer fails to make payment for Goods when due, Buyer's account will be deemed delinquent and Buyer will be liable to Seller for a service charge of eighteen percent (18%) per annum or the maximum allowed by law, whichever is greater, on any unpaid amount. Buyer will be liable to Seller for all costs and expenses of collection, including court costs and reasonable attorneys' fees.

5. CANCELLATION, CHANGES AND RETURNS. If Buyer properly requests a cancellation, change or return, Seller may, at its option: (A) charge Buyer for any costs Seller incurred prior to or because of such cancellation, change or return; (B) revise its prices and delivery dates to reflect such change; and/or (C) accept returned Goods for credit if, in Seller's sole discretion, it finds such Goods to be standard stock and in good condition. The credit will be, in Seller's sole discretion, either the invoice price less a restocking fee of fifteen percent (15%) or the scrap value of the Goods, along with shipping and handling charges to be determined by Seller. Acceptance of returned Goods is in Seller's sole discretion and must include an appropriate return material authorization (RMA) number. All returned Goods must be securely packed by Buyer to ensure that returned material is not damaged during shipment. Goods must be in the original box with original accessories, packaging, manuals, and registration card in undamaged, clean, and brand-new condition.

6. FORCE MAJEURE; DEFERRED DELIVERY. Seller will not be liable for any expense, loss or damage resulting from delay in delivery or prevention of performance caused by any event beyond Seller's reasonable control ("Force Majeure"), including but not limited to: fire; flood; storm; act of God; strike, labor dispute or labor shortage; lack of or inability to obtain materials, fuels, supplies or equipment; civil unrest or riot; accident; transportation delay or shortage; act or failure to act of Buyer or any government. Seller will have such additional time for performance as reasonably necessary under the circumstances and may adjust the price to reflect increases caused by Force Majeure. Buyer's acceptance of any Goods will constitute Buyer's waiver of any claim for damages for any delay in delivery of such Goods. If delivery is delayed or interrupted by Force Majeure, Seller may store the Goods at Buyer's expense and risk and charge Buyer a reasonable storage rate. If Seller is delayed because it is awaiting Buyer's approval or acceptance of designs, drawings, prints or engineering or technical data, or is awaiting Buyer's approval or acceptance of Goods, Seller will be entitled to a price adjustment equal to increase in Seller's production costs and other losses and expenses incurred by Seller attributable to such delays. If Buyer requests and Seller approves in writing a deferred delivery on any Order, Seller may charge Buyer for the completed portion of the Order and warehouse all completed Goods at Buyer's expense and risk of loss. As to any uncompleted portion of the Order, Seller may, at its option, cancel the uncompleted portion under Section 5 above or revise its prices and delivery schedules on the uncompleted portion to reflect its increased costs and expenses attributable to the delay.

7. INTELLECTUAL PROPERTY.

(A) **Ownership.** Except for rights expressly granted under this Agreement, nothing in this Agreement will function to transfer any of Seller's Intellectual Property rights to Buyer, and Seller will retain exclusive interest in, and ownership of, its Intellectual Property developed prior to entering this Agreement or developed outside the scope of this Agreement.

(B) **Definitions.**

i. "Intellectual Property" means all of the following in any jurisdiction in the world:

1. trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the trademarks and service marks,
2. copyrights, including all applications and registrations relating to them,
3. trade secrets and confidential know-how,
4. patents and patent applications,
5. websites and internet domain name registrations,

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6. other intellectual property and related proprietary rights.
- ii. “Modifications” means all additions, updates, and bug patches to, improvements on, new versions of and other modifications to Intellectual Property made by either party during this Agreement.

8. WARRANTY.

- (A) **Hardware Warranty.** Synapse Wireless, Inc. (“Seller”) warrants that the supplied hardware Goods are free from defects in materials and workmanship under normal and proper use for one (1) year from the date said Goods are sold to Buyer; provided that the following Goods will have a five (5) year warranty period from the date the Goods are sold to Buyer: SimplySNAP Lighting Controllers and SimplySNAP Lighting Site Controller Gateways. Seller will not be liable or responsible for defects in any part of Goods manufactured by others, but Seller will, as an accommodation to Buyer, assign to Buyer any warranties given to it by any such other manufacturers; provided, however, that the foregoing will not extend Seller’s warranty to any accessory products unless Seller specifically agrees in writing. Seller’s liability for breach of this hardware warranty will be limited to replacement, repair or refund, in Seller’s sole discretion. The Goods that Buyer considers defective must be returned per Seller’s standard Return Material Authorization procedures. Seller will not be responsible for labor or service for removing or replacing Goods returned under this warranty. Repair or replacement does not extend the warranty for such repaired or replaced Goods. Replacement Goods may be substituted with functionally equivalent new or remanufactured, refurbished, or reconditioned Goods or parts thereof, in Seller’s discretion. This warranty will be void if, in Seller’s reasonable opinion, the defect was caused in whole or part by: (a) improper handling, use, operation or testing by anyone other than Seller; (b) failure to properly install or maintain the Goods by anyone other than Seller; (c) failure to install or maintain in accordance with the current edition of the U.S. National Electric Code or other applicable local electric or other applicable safety code; (d) modification, alteration or unauthorized repair by anyone other than Seller; (e) use with products or components that are incompatible with Seller’s Goods; (f) Force Majeure events or acts of vandalism, sabotage or hacking; (g) radio frequency interference; (h) removal from the country where the Goods were purchased, use in a country in which they are not registered for use, and/or use in a country for which they were not designed; (i) use in fail- safe environments in which failure of the Goods could lead to personal injury or significant property damage; or (j) any other cause beyond normal usage in accordance with Seller’s written instructions. This warranty is made only to Buyer and its original customer and not to any subsequent purchaser.
- (B) **Software Warranty.** Software Goods are provided by Seller “AS IS” with no warranty of any kind.
- (C) **Services Warranty.** If Seller is providing any paid services, Seller warrants that such services will be performed in accordance with generally accepted industry standards and practices by competent personnel. If any services fail to comply with this standard and Buyer provides notice of such non-compliance within thirty (30) days from the date the Services were performed, Seller will, at its option, either re-perform such services at no additional charge or refund to Buyer all fees paid by Buyer with respect to such non-complying services. The foregoing remedies are the exclusive remedies for any breach of Seller’s warranty of services.
- (D) **Intellectual Property Warranty.** Seller represents and warrants that, to its knowledge, the Goods provided under this Agreement do not infringe on any patent, trademark or other proprietary right of a third party.
- (E) LIMITATION OF LIABILITY. THE WARRANTIES IN SECTIONS (A), (B), (C) and (D) ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW OR STATUTE OR ARISING FROM TRADE USAGE OR COURSE OF DEALING. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OR**

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ANY OTHER MATTER. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, WILL SELLER BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF USE OF GOODS OR OTHER PROPERTY OR EQUIPMENT, DAMAGE TO OTHER PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, DOWNTIME OR CLAIMS OF BUYER'S CUSTOMERS FOR ANY OF THE AFORESAID DAMAGES EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER WILL NOT BE LIABLE AND BUYER AGREES TO INDEMNIFY SELLER FOR ALL PERSONAL INJURY, PROPERTY DAMAGE AND OTHER LIABILITY RESULTING IN WHOLE OR PART FROM BUYER'S NEGLIGENCE OR WILLFUL MISCONDUCT. NO CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE MAY BE BROUGHT AGAINST SELLER MORE THAN TWENTY-FOUR (24) MONTHS AFTER DELIVERY OF GOODS TO BUYER. In any contract by Buyer for resale of Goods, Buyer will effectively disclaim, as against Seller, any implied warranty of merchantability and all liability for property damage or personal injury resulting from handling, possession or use of Goods, and will exclude, as against Seller, any liability for special or consequential damages.

THE GOODS ARE NOT DESIGNED OR INTENDED FOR USE IN ANY MEDICAL, LIFE SAVING OR LIFE SUSTAINING SYSTEMS, TRANSPORTATION SYSTEMS, NUCLEAR SYSTEMS, AIR-TRAFFIC CONTROL OR FOR ANY OTHER MISSION CRITICAL APPLICATION IN WHICH THE FAILURE OF THE GOODS COULD LEAD TO PERSONAL INJURY, ILLNESS OR DEATH. BUYER SHALL INDEMNIFY AND HOLD SELLER AND ITS AFFILIATES HARMLESS AGAINST ALL CLAIMS, COSTS, DAMAGES, AND EXPENSES, AND REASONABLE ATTORNEY FEES ARISING OUT OF, DIRECTLY OR INDIRECTLY, THE UNINTENDED USE OF THE GOODS AND ANY CLAIM OF PRODUCT LIABILITY, PERSONAL INJURY OR DEATH ASSOCIATED WITH ANY UNINTENDED USE, EVEN IF SUCH CLAIM ALLEGES THAT A SELLER PARTY WAS NEGLIGENT REGARDING THE DESIGN OR MANUFACTURE OF THE GOODS.

9. CONTROLLING LAW; CONSENT TO VENUE; DISPUTE RESOLUTION. This Agreement and all rights and obligations hereunder will be governed by, and construed in accordance with, the laws of the State of Alabama, without regard to its conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All disputes, claims or controversies ("Dispute") between Seller and Buyer arising out of or relating to this Agreement, including but not limited to Disputes based on or arising from an alleged tort, will be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Disputes will be arbitrated in Birmingham, Alabama. Defenses based on statutes of limitation and similar doctrines will be applicable in any such proceeding, and commencement of an arbitration proceeding under this Agreement will be deemed commencement of an action for such purposes. The parties will select arbitrators in accordance with the Commercial Arbitration Rules of the AAA. The AAA will designate a panel of ten (10) potential arbitrators knowledgeable in the subject matter of the Dispute. Seller and Buyer will each designate, within thirty (30) calendar days of receipt of the list of potential arbitrators, one of the potential arbitrators to serve, and the two arbitrators so designated will select a third arbitrator from the eight remaining candidates. No Dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person ("Collective Proceedings"). Accordingly, AAA's Supplementary Rules for Class Arbitrations will not be applicable. If this limitation on Collective Proceedings is held by a court of competent jurisdiction to be unenforceable or interpreted to not prevent a Collective Proceeding, then such action will proceed in a court of law as provided below and not arbitration. If any arbitrator renders a decision regarding the question of arbitrability of the above limitation or orders any form of Collective Proceeding, then the arbitrator has exceeded its powers under the Federal Arbitration Act. Notwithstanding the foregoing, Seller reserves the right to resolve or bring any Dispute in a court of competent jurisdiction in the state or federal courts of Alabama and the parties irrevocably agree that, except when the Dispute is arbitrated, the exclusive venue for all Disputes between the parties will be the state and federal courts of Alabama, to which jurisdiction Buyer hereby irrevocably submits. Buyer waives any objection or defense that Buyer is not personally subject to jurisdiction of the state and federal courts of Alabama; that venue of the action is improper; and that the action, suit, or proceeding is brought in an inconvenient forum. In addition to any other mode of service of process authorized by law, Buyer consents to service of process by registered or certified mail.

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10. COMPLIANCE WITH LAWS. Each party represents and warrants, in connection with transactions contemplated by this Agreement, and any other agreement contemplated by or entered into pursuant to this Agreement, that it will comply with all applicable federal, state and local laws, codes, regulations, orders and ordinances, including but not limited to all applicable: (A) laws and regulations regarding export controls, economic sanctions, trade embargoes, anti-boycott restrictions and anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (as amended) and the United Kingdom Bribery Act (“Applicable International Trade and Anti-Corruption Laws”); (B) equal employment opportunity laws, regulations and requirements and laws and regulations prohibiting discrimination against any person because of veteran status, disability, race, creed, color, national origin, religion, age or sex in any term or condition of employment; and (C) laws and regulations addressing human trafficking and slavery. Each party acknowledges and confirms that it and its officers, directors, employees, agents, contractors, designees, and/or any other party acting on its behalf (“Related Parties”) are familiar with the provisions of Applicable International Trade and Anti-Corruption Laws. Each party agrees to indemnify, defend, and hold harmless the other party and its employees from and against all claims, demands, costs, penalties, and fines arising in connection with any alleged breach by the indemnifying party or any of its Related Parties of this Section. Seller may terminate this Agreement entirely, without liability to Buyer, if Seller believes in good faith that Buyer or any of its Related Parties has violated or intends to violate this Section.

11. CONFIDENTIALITY. Neither party will disclose the terms and conditions or pricing contained in this Agreement to any third party except as required by applicable law, rule or regulation; provided, however, that either party may disclose such terms, conditions or pricing to legal, accounting and professional advisors bound by formal ethical or fiduciary duties requiring such advisors to treat, hold and maintain such information in accordance with the terms and conditions of this Agreement.

12. INDEMNITY. Seller will defend and indemnify Buyer against any third party claim that the normal use of the Goods, in accordance with this Agreement, infringes the intellectual property rights of any third party; provided that Buyer: (i) immediately notifies Seller of any claim; (ii) makes no decision or settlement of any claim without Seller’s prior written consent; (iii) allows Seller to have sole control over all negotiations for settlement; and (iv) gives Seller all reasonable assistance in connection with defense and settlement of the claim. If Buyer is prevented from using Goods by any enforceable court decision, Seller will, at its own cost and in its discretion, either modify Goods to avoid infringement or obtain for Buyer the right to use the Goods. Notwithstanding the foregoing, Seller shall have no liability or indemnification obligation with respect to any claim that arises from (A) the use, operation or combination of Seller’s Goods with programs, data, equipment, or materials not provided by Seller if such infringement would have been avoided by the use of Seller’s Goods without such other programs, data, equipment, or materials; or a modification of Seller’s Goods by anyone other than Seller.

13. MISCELLANEOUS.

(A) No waiver of any provision, right or remedy contained in this Agreement, including the terms of this Section 14(A), is binding on or effective against Seller unless expressly stated in writing and signed by Seller’s authorized representative. Buyer agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage. Buyer expressly agrees and acknowledges that reliance on any waiver without Seller’s written consent is unreasonable. Waiver by Seller of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. Seller’s approval or consent to any action proposed by Buyer will not be considered an agreement to the propriety, fitness, or usefulness of the proposed action, and will not affect Buyer’s obligation to strictly comply with this Agreement and all related Orders.

(B) Buyer may not assign this Agreement or any rights or obligations hereunder without Seller’s prior written consent. Any attempted assignment in violation of this Section is void; however, this Agreement and the Terms and Conditions contained herein are enforceable against Buyer’s successors and permitted assigns.

(C) Seller’s remedies in this Agreement are cumulative and in addition to any other remedies available to Seller, whether at

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law, equity or otherwise.

- (D) If any provision or part of a provision contained in this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Agreement will remain in full force and effect.
- (E) No provision of this Agreement may be construed against Seller as the drafting party.