TRUMPF INC. TERMS AND CONDITIONS OF SERVICES AGREEMENT
TRUMPF INC. TERMS AND CONDITIONS OF SERVICES

This Agreement governs the sale of professional and/or cloud connect services offered by Seller for its commercial off-the-shelf products ("COTS"). Acceptance of this Agreement is expressly limited to the terms and conditions contained herein. TRUMPF makes all quotations and accepts all orders for such Services (hereinafter defined), only on the terms and conditions stated herein. TRUMPF rejects any terms and conditions contained in any customer’s forms that are additional to or different from those set forth in this Agreement.

Customer and TRUMPF are sometimes referred to individually in this Terms of Sale as a “Party” and collectively as the “Parties.”

DEFINITIONS:

“TRUMPF” or “Seller” means TRUMPF Inc., a Connecticut corporation and/or its parent company or subsidiaries.

1. PRICES: All prices are: (a) TRUMPF’s current prices and are subject to change without notice at any time prior to acceptance of Customer’s order; (b) subject to all federal, state and local taxes for the Services sold hereunder, now or hereafter becoming effective, and if not included in the invoice, such amount may be invoiced later, and Customer shall pay all such taxes.

2. PAYMENT: All invoices shall be due and payable within thirty (30) days after the invoice date (“Payment Due Date”). All payments will be made in U.S. currency. Out of pocket expenses will be charged as incurred. Unless expressly provided to the contrary, items designated as estimates are not binding commitments to sell at the estimated price or to deliver on the estimated schedule. Customer shall also be responsible for all expenses and collection costs incurred by TRUMPF in connection with all past due invoices.

3. SERVICE WARRANTIES:

(a) The Services shall be performed in a good, workmanlike, professional and conscientious manner by experienced and qualified TRUMPF Technical Service Technicians, according to the generally accepted standards of the industry to which the Services pertain. In the event the Services provided by TRUMPF are not in conformance with this warranty TRUMPF will take the steps necessary to correct the deficiency at no charge to Customer. THIS IS CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY.

(b) Services under this warranty are provided during normal business hours and using standard freight delivery. Services and delivery may be otherwise provided dependent upon availability and will be invoiced at TRUMPF Service rates in accordance with TRUMPF Service policies and practices, which are incorporated by reference herein.

(c) TRUMPF shall not be liable under any warranty or other obligation if the alleged defect in the Equipment does not exist or the defect or defective performance is caused in whole or in part by Customer’s or any third party’s misuse, neglect, modifications or additions, the use of non-TRUMPF spare parts or consumables, unauthorized attempts to repair, or by accident or other hazards outside TRUMPF’s control. Use of a non-TRUMPF spare part shall void the warranty if the TRUMPF spare part is available under the warranty free of charge. The warranty described herein is granted only to the original purchaser of the Equipment and/or the original purchaser’s specified end-user and is non-transferrable.

(d) DISCLAIMER OF WARRANTIES: THE LIMITED WARRANTY DESCRIBED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THIS SERVICE AGREEMENT IS FOR SERVICES ONLY, AND DOES NOT PROVIDE, ADD OR EXTEND ANY PRODUCT WARRANTIES. TRUMPF CLOUD CONNECT SERVICES, AND CERTAIN INTERACTIVE SERVICES REQUIRING A WRITTEN USE AT OWN RISK DISCLAIMER, ARE OFFERED “AS IS” WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY CONCERNING THE AVAILABILITY, ACCURACY OR CONTENT OF THE INFORMATION PROVIDED. AN “AS IS” WARRANTY SET FORTH IN A OWN RISK DISCLAIMER SHALL TAKE PRECEDENCE OVER ANY WARRANTY PROVISION STATED HEREIN.
4. EQUIPMENT DATA SERVICES: TRUMPF’s Equipment is self-monitoring and collects and stores in its control unit Equipment Data recording certain performance metrics of the Equipment. On Equipment configured for TRUMPF’s Cloud Connect Services, Equipment Data is collected in real time via TRUMPF’s secure service portal. Customers of Equipment utilizing Cloud Connect active equipment monitoring shall receive enhanced Cloud Connect notification and technician scheduling throughout the Equipment warranty period and during any period in which the Customer maintains a TRUMPF Terms of Sale providing for notification and reporting services. TRUMPF’s reserves the right to add and remove Services from Cloud Connect offerings at TRUMPF’s sole discretion.

“Equipment Data” means any data, metadata, logs or other information generated by the operation of TRUMPF’s Equipment or embedded Software but does not include personally identifiable information nor any information entered into the Software or the Equipment by Customer’s employees, agents, or end-users, except to the extent portions of such information appears in anonymized or aggregated form or in automated logs or similar records through the normal operation of the Software. The Equipment end user can isolate inputs of personal and proprietary data from monitoring by following the technical table procedures set forth in the Software and Operators Manuals.

(A) Opt-Out Rights. Cloud Connect active equipment monitoring service is activated during installation of the Equipment. The Equipment’s end user can opt out of active machine monitoring by following the procedures set forth in the Software and Operators Manuals. End users who exercise this opt out option shall not receive Cloud Connect enhanced services and may experience limitations on machine functions or systems integrations that rely on information processed through Cloud Connect or automated data communications, or may be subject to surcharges increasing costs for contracted Services.

(B) Data Security. TRUMPF shall use the same care in protecting the integrity and security of Equipment Data, as it uses to preserve the integrity and security of TRUMPF’s own proprietary information, but in no event less than reasonable care. TRUMPF uses Equipment Data for delivery of Services and Equipment under warranty and service agreements, and anonymized data points derived from Equipment Data in product research and development.

(C) Ownership of Equipment Data. TRUMPF owns all rights, titles and interests in Equipment Data, and all data derived therefrom and reserves to itself all lawful uses thereof. TRUMPF hereby grants the Customer a perpetual, non-exclusive, royalty-free license to use, reproduce and store the Equipment Data solely for the purpose of, and to the extent required in, operating the Equipment, transferable only in conjunction with and as part of the transfer of ownership of the Equipment to a new end user.

(D) CLOUD CONNECT SERVICES “AS IS” WARRANTY. TRUMPF’s CLOUD CONNECT SERVICES ARE PROVIDED ‘AS IS’ WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION: 1) ANY WARRANTY CONCERNING THE AVAILABILITY, ACCURACY OR CONTENT OF THE INFORMATION, OR 2) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. CUSTOMER’S DILIGENT ATTENTION REQUIRED. Customer shall restrict the use of services support and information to Customer’s qualified service employees having the skills and exercising the care ordinarily used by professionals performing maintenance and repair services in the location of the Customer’s facility. Customer shall exercise care to protect itself and its employees by informing itself of the condition of TRUMPF’s products in its possession, including those facts that are reported to, known to or within the diligent attention and observation of the Customer or its employees. Information provided by TRUMPF is not a substitute for Company’s independent duty to evaluate Services and maintenance to be performed on the products and to determine that such tasks are within the skill set of on-site maintenance/service personnel.

7. LIMITATION OF LIABILITY. NEITHER PARTY’S LIABILITY ON ANY INDEMNIFICATION OR ANY CLAIM OF ANY KIND, UNDER ANY THEORY, AT LAW OR IN EQUITY, INCLUDING NEGLIGENCE OR STRICT LIABILITY, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE SERVICES OR BREACH OF THE TERMS HEREOF, OR FROM THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, MODIFICATION, REPAIR, OPERATION OR USE OF ANY SERVICE, GOOD OR PART THEREOF SHALL IN ANY CASE EXCEED THE PRICE ALLOCABLE TO THE SERVICE, GOOD OR PART THEREOF WHICH GIVES RISE TO THE CLAIM. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH A BREACH OF THE CONTRACT SALE OR ANY OTHER DUTY OF THAT PARTY WITH RESPECT TO THE GOODS OR SERVICES OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, LOST SALES OR INJURY TO PERSONS OR PROPERTY EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES.
8. **FORCE MAJEURE**: Neither Party shall be liable for or will be considered to be in breach of or default under this Terms of Sale on account of any delay or failure to perform as a result of any causes or conditions that are beyond the Party's reasonable control and that the Party is unable to overcome through the exercise of commercially reasonable diligence, including but not limited to fire, explosion, flood, storm or other acts of God, disruptions in transportation networks, failures of carriers or utilities, war, embargo, strike, riot, or the intervention of any government authority (collectively "Force Majeure Event"). If any Force Majeure Event occurs, the affected Party shall give prompt written notice to the other Party and use commercially reasonable efforts to minimize the impact of the event.

9. **NOTICE OF CLAIMS**: Customer shall inspect the Services upon receipt and shall notify TRUMPF in writing of any claims within thirty (30) days after Customer discovers, or should have discovered, facts upon which the claim is based. Failure of Customer to give written notice of a claim within the time period or in the form specified above shall be deemed to be a waiver of such claim.

10. **LIMITATION OF ACTIONS**: No action for breach of any term of this Service Agreement or any other duty of TRUMPF with respect to the Services may be commenced more than one (1) year after delivery of the Services.

11. **GOVERNING LAW**: The validity, interpretation and performance of this Terms of Sale shall be governed by the laws of the State of Connecticut.

12. **NONPAYMENT OF PURCHASE PRICE**: If Customer shall not pay the full purchase price for the Services and/or Service Agreement within thirty (30) days from the date of the invoice; Customer will pay TRUMPF thereafter an additional one and one-half percent (1-1/2%) per month on the unpaid balance of the purchase price until paid in full. Such charge shall be added to and become an additional part of the purchase price for the Services.

13. **ENTIRE AGREEMENT**: This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties pertaining to the subject m