



MAVRIX, INC. TERMS AND CONDITIONS

1. FORMATION OF CONTRACT.

This document constitutes an offer ("Offer") by Mavrix, Inc... ("Mavrix") to the buyer set forth herein ("Customer") to provide the hardware, software, technical data, and/or services described herein ("Goods") by Purchase Order ("Order") or by signed agreement referencing the Offer. The Contract will consist of the Offer, the Order (excluding Customer's preprinted, conflicting or additional terms), these terms and conditions ("Terms") and Mavrix's Order acknowledgment. Mavrix neither waives these Terms nor accepts any of Customer's terms by performance. These terms may only be superseded by a written agreement signed by both Mavrix and Buyer. Mavrix's sales representatives do not have the authority to change, modify or alter the Terms. This Offer is void unless accepted within 45 days of issuance. Customer shall be deemed to have made an unqualified acceptance of this Offer and the terms and conditions herein upon the earliest of the following to occur (i) Mavrix's receipt of a copy of this Offer, signed by Customer, whether by delivery of original or by facsimile; (ii) Customer's payment of any amount due under this Offer; (iii) Customer's receipt of the Goods or a portion of the Goods; or (iv) any other event constituting acceptance under applicable law. Mavrix reserves the right to correct clerical or similar errors relating to price or any other term in this Offer.

2. CONFIDENTIALITY, NONDISCLOSURE AND LICENSE AGREEMENTS.

As a condition precedent to Mavrix's obligations to deliver, Customer agrees that it will execute the appropriate Mavrix Nondisclosure and/or License Agreement and any other third party software licenses that may be required for software, documentation and firmware supplied as deemed necessary by Mavrix. Customer acknowledges that in the course of performance of its obligations pursuant to this Contract, Customer may obtain confidential and/or proprietary information of Mavrix or its affiliates, including but not limited to, information relating to development plans, costs, finances, marketing plans, equipment configurations, data, access or security codes or procedures utilized or acquired, business opportunities, names of customers, research and development, these terms and conditions, and information identified as confidential either verbally or in writing. Customer hereby agrees that all such confidential or proprietary information, shall be and was received in strictest confidence, shall only be used for the purposes agreed to by Mavrix under this Contract and shall not be disclosed by Customer, its agents or employees, without prior written consent of Mavrix.

3. CHANGE ORDERS.

The prices for any extras or changes to the scope of work (in the Offer or as agreed upon by the parties in writing) or modifications to the payment or performance schedule, will be agreed in writing before either party will be obligated to proceed with such changes. Performance of any change will not waive any claims for adjustment in price or schedule.

4. SHIPMENT AND DELIVERY:

A. TRANSPORTATION. Prices are based on delivery EXW, New Berlin, WI (Mavrix's shipping site), freight prepaid but not allowed, in domestic package. These prices represent cost and do not include taxes, and are subject to the addition of any and all taxes which Mavrix might be required to pay or collect by reason of sale, purchase or use of the materials listed. Title (other than for licensed materials) and risk of loss will pass from Mavrix to Customer upon delivery to the possession of the carrier. Customer will arrange for any freight insurance.

B. RISK OF LOSS. Notwithstanding the delivery term, insurance coverage of Mavrix's Goods at Customer's site prior to final acceptance, or of Customer's equipment at Mavrix's site, will be provided by the party having custody and control of the Goods or equipment.

C. DELIVERY SCHEDULE. Schedule dates will be agreed on by the parties and are contingent upon prompt receipt by Mavrix of all necessary payments, approvals, information, and software licensing agreements on such dates or with such lead times as may be specified by Mavrix. Mavrix will use reasonable efforts to achieve the schedule dates.

D. PACKING AND CRATING. Goods will be packed in accordance with Mavrix's standard commercial practice, in domestic package. Special packing or crating will be provided only at the Customer's request and expense.

E. SHIPMENT DELAYS. If shipment of Goods is delayed at the request of, or due to acts or omissions of Customer, Mavrix may store such Goods in any commercially reasonable manner at Customer's sole risk and expense. Any payments that would be due Mavrix, had such Goods been shipped as scheduled, will be considered due and owing, and Mavrix may invoice Customer on schedule.

5. TECHNICAL SUPPORT.

Customer is responsible for receiving, inspecting, storing, wiring, piping, installing, testing, commissioning and start-up of systems. Mavrix personnel act only as technical support and are not authorized to operate the system on customer's behalf. Customer will indemnify and hold Mavrix harmless from and against all claims, demands, obligations, and liabilities, including any and all personal injury and/or property damage, arising in connection with such technical support activities.

A. LABOR AND TRAINING TERMS. All portal to portal travel time, meals, lodging and normal incidentals incurred by Mavrix personnel during a service call shall be paid by Customer. Prior to service and/or training, Customer will be provided a purchase order and is payable upon receipt. At Customer's cost, all services required must be in place and adequate help and handling available to Mavrix personnel. Customer's operators shall be experienced welders and will be trained in the use and operation of Mavrix's welding system. Welding materials to be on hand and work to be on hand and ready for welding. Delays



caused by Customer's failure to meet the foregoing conditions in this Section shall be treated as a service call under Section B of this Paragraph and will be billed accordingly.

B. LABOR AND TRAINING CHARGES.

- i) Base rate for all service calls and training provided by Mavrix shall be \$120/hour for the first eight hours of any service call.
- ii) For service calls and training over eight hours or a service call on a Saturday with a duration of less than eight hours, base rate shall be \$130.
- iii) For service calls and training with a duration of eight hours or more on a Saturday, all service calls on Sunday and service calls on calendar holidays, base rate shall be \$140.

6. TECHNICAL SUPPORT. PAYMENT TERMS:

- A. \$50.00 USD minimum on all billing.
- B. 30% of order amount is due and payable with Customer's domestic purchase order for machines over \$12,000 USD. The remainder, including applicable sales tax and shipping charges, is due net 30 days from shipment.
- C. 40% of order amount is due and payable with Customer's domestic purchase order for machines over \$50,000, and scheduled mandatory progress payments may apply thereafter.
- D. 50% of order amounts is due and payable with all of Customer's international purchase orders regardless of purchase price, and payment in full of order amounts is due prior to shipping for all international purchase orders.
- E. Orders for all special or custom-built machines are strictly non-cancelable once confirming purchase order has been received.

7. TAXES.

Prices in Mavrix Offer are exclusive of all taxes related to this Contract. Customer shall reimburse Mavrix for such taxes paid by Mavrix, except for taxes on Mavrix's income.

8. INSOLVENCY.

In the event the Customer becomes insolvent or applies for bankruptcy or, being a company, goes into liquidation (other than for the purposes of reconstruction or amalgamation), Mavrix shall be entitled to terminate this Contract without notice and without prejudice to any other rights of Mavrix hereunder.

9. CUSTOMER INFORMATION.

Customer will provide Mavrix with accurate and complete information in order to permit Mavrix to successfully undertake and complete the work, including Customer's Federal Employer Identification Number. Where Customer information is incomplete or incorrect, resulting in delay or extra work, Mavrix will be entitled to adjustment by change order.

10. DOCUMENT APPROVAL.

Mavrix may request that Customer review documents developed by Mavrix for conformity with Customer requirements or specifications. Unless Customer advises Mavrix otherwise in writing within five (5) business days after Mavrix' submission, Mavrix may consider the documents approved and proceed with work. Changes thereafter, made at the direction of Customer, will entitle Mavrix to adjustment by change order.

11. FINAL ACCEPTANCE.

Final acceptance occurs on the thirty-first (31) day after delivery, unless Customer has given Mavrix prior notice in writing detailing any nonconformity. After final acceptance, Customer's sole and exclusive rights and remedies for any nonconformity will be under the warranty provision provided herein.

12. WARRANTY.

The seller warrants to the first purchaser for a period of six (6) months after the date of shipment all products or equipment manufactured by the seller under normal use and service to be free from defects in material and workmanship. The Sellers obligation under this warranty shall be limited to replacing or repairing any parts found on Seller's inspection to be defective and furnishing any parts necessary to correct engineering defects, as determined by Seller, without charge to the Buyer, FOB Seller's plant, provided the use of the products or equipment is discontinued immediately. The allegedly defective products or equipment shall be returned by the Buyer for inspection by the Seller, Transportation charges prepaid. This warranty or repair and replacement applies solely to such products or equipment manufactured by the Seller. Seller is not responsible for unauthorized alterations to any products or equipment.

B. EXCLUSIONS. The warranty contained in this section is the only warranty made by Mavrix and is the exclusive remedy of Customer for defects in Goods. It will not be affected by, and no obligations, nor liability, will arise from, Mavrix rendering of technical or other advice or service in connection with the Goods. **MAVRIX MAKES NO OTHER WARRANTIES OR CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. MAVRIX SHALL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGE, WHETHER BASED ON LOST REVENUE OR OTHERWISE, REGARDLESS OF WHETHER MAVRIX WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES IN ADVANCE. MAVRIX'S LIABILITY SHALL BE LIMITED TO THE AMOUNT OF THE MONIES OR FEES PAID TO MAVRIX FOR DEFECTIVE MAVRIX**



SOFTWARE, REGARDLESS OF WHETHER CUSTOMER'S CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE.

13. FORCE MAJEURE.

Neither party will be liable to the other for any delay or failure to perform due to causes beyond its reasonable control. The party experiencing the force majeure will notify the other party promptly, and appropriate adjustments will be negotiated.

14. CUSTOMER SUSPENSION OF WORK & DELAY.

Retaining all other rights or remedies, if Mavrix's performance is delayed by Customer's suspension of work, in whole or in part, or by any act or omission of Customer, the time for performance will be extended by the period of time required by Mavrix to return to the state of performance that existed before the delay. If the delay or suspension continues for sixty (60) days, Mavrix has the right to cancel or renegotiate the Contract. Customer will pay an equitable adjustment based on a claim submitted by Mavrix for all reasonable costs, damages and expenses incurred by Mavrix incident to the delay or suspension.

15. TERMINATION.

In the event of a material breach, if a cure has not been satisfactorily commenced within thirty (30) days of receiving written notice detailing the breach or failure, the non-breaching party, by written notice to the other party, may terminate this Contract. Customer's wrongful termination or purported termination will be considered a material breach. Provided, however, that Mavrix may, by written notice to the Customer, at any time, and without prejudice to any other rights or remedies provided by law or contained herein, suspend performance of this Contract if Customer has failed to make payments due after ten (10) days written notice. Prior to any resumption of work, Mavrix and Customer will agree upon a change order for any adjustments to the performance dates, payment schedule and price that result from the suspension.

16. LIMITATION OF LIABILITY.

Inclusive of the terms of Paragraph 20 herein, Mavrix's maximum liability to Customer, and Customer's exclusive remedy for any cause whatsoever, regardless of the form of action, whether in contract or in tort, including negligence, will be limited to the recovery of actual damages up to any amounts paid by Customer with respect to the Contract, plus reasonable attorneys' fees and court costs awarded by a court of competent jurisdiction in a suit for damages. Notwithstanding the above, Customer and Mavrix will be liable to each other for personal injuries caused by the liable party's fault, or the fault of its employees, agents and contractors during any work performed at Customer's premises. **NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES,** unless stated otherwise in these Terms.

17. NOTICE.

Any notice relating to this Contract will be deemed given when sent to the other party by certified mail or receipted express courier service with proof of delivery to the carrier. Notice to Mavrix will be directed to Glen Senger's attention at Mavrix at the address set forth on the face of this form. Either party may change its address for notification upon written notice to the other party.

18. COMPLIANCE WITH LAWS.

Customer will secure or pay for any registration, licenses, regulatory approval, export licenses, re-export licenses, permits, or other requirements of any governmental bodies, applicable to Customer's industry or location. Any cost or expenses incurred by Mavrix in meeting such requirements will be charged to Customer. Upon request from Mavrix, the Customer shall furnish Mavrix with copies of all documents relating to such registration, licenses, export licenses, re-export licenses, permits, or other requirements of any governmental bodies.

19. EXPORT CONTROL.

The Goods may require a validated license from the U.S. government before export or re-export. Customer undertakes not to re-export the Goods without the requisite export license from the relevant body of the United Nations or other similar international organization, the United States Government, the country of origin or the original country of export.

20. CHOICE OF LAW/JURISDICTION.

The validity, performance and all matters relating to the interpretation of this Contract will be governed by and construed in accordance with the laws of the State of Wisconsin, excluding its conflict of laws provisions. The parties hereby consent and submit to jurisdiction and venue in the State and Federal courts of Wisconsin.

21. DISPUTE RESOLUTION, GOVERNING LAW:

A. All disputes arising either directly or indirectly out of or in connection with this Contract, including any question regarding its subject matter, existence, validity or termination ("Disputes"), shall be resolved in accordance with this paragraph, which shall be the sole and exclusive procedure for the resolution of any Dispute.

B. The parties shall attempt in good faith to resolve any Dispute promptly by negotiation between the parties. If the matter has not been resolved within thirty (30) days after a party's written request for negotiation, either party may initiate arbitration as provided herein. Any Dispute, which has not been resolved as provided above, shall, at the request of either party, be finally settled by arbitration under the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes in effect on the date of this Contract, by an independent and impartial arbitrator. The validity of this arbitration provision, the conduct of the arbitration, any challenge to or enforcement of any arbitral award or order, or any other question of arbitration



law or procedure shall be governed exclusively by the United States' Federal Arbitration Act, 9 U.S.C. sections 1-16; however, the award can be modified or vacated on grounds cited in the Federal Arbitration Act or if the arbitration panel's findings of facts are not supported by substantial evidence or the conclusions of law are erroneous under the laws of the State of Wisconsin. The place of arbitration shall be Milwaukee, Wisconsin, USA. Federal and state courts located in Milwaukee shall have exclusive jurisdiction over any action brought to enforce this arbitration provision, and each party irrevocably submits to the jurisdiction of those courts for that purpose. Notwithstanding the foregoing sentence, either party may apply to any court of competent jurisdiction, wherever situated, for enforcement of any judgment or arbitral award.

C. Except as time barred under any applicable statute of limitation of lesser duration, any claim by either party shall be time-barred unless the asserting party commences an arbitration proceeding with respect to such claim within two (2) years after the cause of action has accrued.

D. Notwithstanding any other provision of this Contract, the parties expressly agree that before the first meeting of the arbitral tribunal, either shall have the right to apply to any state or federal court in Wisconsin for provisional or interim measures.

22. ASSIGNMENT.

Neither Party will assign or otherwise transfer its rights or obligations hereunder, in whole or in part, without the advance written consent of the other. Notwithstanding the above, **Mavrix** may assign its rights or obligations to its parent or any of its subsidiaries or affiliates without the written consent of the Customer.

23. AMENDMENT AND WAIVER.

No modification of any term or condition will be effective unless in writing and signed by the parties. Invalidity of any Term, in whole or in part, will not affect the validity of any other Term. Any failure to enforce any of these Terms will not constitute a waiver.

24. ENGLISH LANGUAGE.

The parties hereto accept that this Contract and any documents related thereto be drawn up in the English language.

25. SEVERABILITY.

If any provision of this Contract is determined to be invalid, illegal or unenforceable, the remaining provisions of this Contract shall remain in full force, as long as the essential portions of this Contract remain valid, legal and enforceable.

26. ENTIRE AGREEMENT:

This Contract, including all attachments and documents incorporated by reference, constitutes the entire agreement between the parties and supersedes all proposals, prior agreements, understandings and negotiations, oral and written, and any printed terms on Orders or invoices issued previously or in the future, concerning the matters specified herein. No course of dealing nor usage of trade nor course of performance may be used to add to or amend the plain meaning of this Contract.