

FRIO CONTROLS

Terms and Conditions of Sale

These Terms and Conditions of Sale (these “**Terms**”) comprise the **Agreement** and govern the purchase and sale of Frio products (the **Products**) by the **Seller** (Frio LLC) to the **Customer**. The Seller and the Customer may be referred to herein individually as, a “**Party**,” and together as, the “**Parties**.” In consideration of the mutual covenants and obligations set forth herein, the Parties hereby agree as follows:

1. **SALE; PRICE; PAYMENT.**

(a) These Terms apply to all Products purchased by the Customer. All orders for Products by the Customer shall be deemed to be an offer by the Customer to purchase Products pursuant to these Terms. No orders submitted by the Customer shall be deemed to be accepted by the Seller unless and until the Seller ships the Products to which the Agreement relates. Acceptance of delivery of the Products and/or payment of the purchase price for the Products shall be deemed conclusive evidence of the Customer’s acceptance of these Terms. No variation or amendment to, or waiver of, these Terms will be binding unless agreed to in writing by the authorized representatives of each of the Customer and the Seller.

(b) Unless expressly agreed otherwise by the Seller in writing, the price for the Products shall equal the Seller’s list price for such Products as of the date of shipment (the “**Price**,” and such date, the “**Shipment Date**”). The Customer will pay the Price and all sales, use, value-added, and excise taxes and duties and charges imposed by a governmental authority for Products excluding taxes based on the Seller’s net income. To the extent feasible, applicable taxes shall be billed to the Customer as a separate item. The Customer will pay all costs of carriage of the Products to the Customer. The Customer will pay the Seller’s invoices within thirty (30) days of the invoice date. Payment by the Customer shall be made in U.S. Dollars electronically to an account designated on the applicable invoice.

(c) The Customer agrees to pay interest equal to the lesser of eighteen percent (18%) per annum and the maximum rate permissible under applicable law on any amount due to the Seller and not paid in accordance with these Terms, from the due date for payment, until the date of payment. Further, if any payment is not received within thirty (30) days after the date on which payment is due, the Seller may suspend access to Frio Software without penalty or liability to the Seller. For amounts unpaid and outstanding for more than sixty (60) days following such due date, the Customer agrees it is responsible for, and agrees to pay, reasonable costs and expenses of collection, including, but not limited to, court and attorneys’ fees and expenses.

(d) In the event the Price for the Products changes between the Effective Date and the Shipment Date for such Products, the Seller will notify the Customer and give the Customer the opportunity to cancel the Products ordered under the Agreement (in which case the Customer will receive a refund of any amounts prepaid for such Products); provided, however, that Customer’s failure to respond to such notification of a change in Price within ten (10) days of the delivery of such notification will be treated as acceptance of such change in Price. After the Effective Date, the Products ordered hereunder may not be cancelled except by an agreement in writing signed by the Seller, and provided that the Customer indemnifies, defends and holds harmless the Seller in full from and against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation; and pays the Seller a restocking fee equal to ten percent (10%) of the amounts payable therefor (which may be deducted from amounts already paid by the Customer, if any).

(e) The Customer agrees not to withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Customer may have or allege to have for any reason whatsoever.

(f) Upon the Customer’s receipt of each delivery of Products delivered in accordance with these Terms, the Customer shall inspect such Products in order to ensure they meet the Specifications (as defined herein) in all material respects and shall furnish to the Seller in writing any claim such Products do not meet the Specifications in a material respect within seven (7) days after its receipt thereof. Failure to give written notice within such seven (7)-day period constitutes Customer’s acceptance of such Products. For purposes hereof, “**Specifications**” means written specifications, user guides, and manuals that may be provided by the Seller in relation to the Products or Frio Software made available at www.frio.co or provided to the Customer by the Seller.

(g) Paid Fees (as defined herein) are non-refundable. If the Customer elects to pay the Fees by credit card, Customer hereby authorizes the Seller or its third party payment processor to charge such credit card on the dates of payment. For purposes of the Agreement, “**Fees**” means the monthly or annual fees payable by the Customer in exchange for the rights to access and use Frio Software granted in the Software License and in the EULA (as defined in the Software License), which fees may be adjusted by the Seller no later than thirty (30) days prior to the end of the then-current Term (as defined below) to be effective on the date on which the renewal of such Term is effective.

2. **DELIVERY, TITLE & RISK.**

(a) The Seller will deliver accepted orders for the Products to a carrier for shipment, provided that the Seller is not required to deliver Products purchased hereunder in less than thirty (30) days from the Effective Date. Any dates quoted for delivery of the Products are approximate only and the Seller is not liable for any delay in delivery of the Products howsoever caused.

(b) All deliveries to the Customer are EXW (as such term is defined under ***Incoterms 2010***) the Seller’s manufacturing facility and all risk of loss with respect to Products shall pass to the Customer in accordance therewith. The Customer will be responsible for all costs associated with insurance, freight, import/export charges, and similar costs and expenses related to the shipping and warehousing of Products. Notwithstanding delivery and the passing of risk in the Products, or any other provision set forth herein, title in the Products shall not pass to the Customer until the Seller receives in cash or cleared funds payment in full of the price of the Products in accordance with these Terms, and until all other sums due from the Customer to the Seller have been finally paid in full. The Customer hereby grants

the Seller a purchase money security interest in Products to secure, if and to the extent deemed necessary by the Seller, the payment of the prices of such Products and all other amounts due to the Seller from the Customer.

3. WARRANTIES, INDEMNIFICATION, AND LIMITATIONS OF LIABILITY.

(a) **Mutual Representations and Warranties.** Each party represents and warrants to the other party that: (i) its performance under these Terms will not violate any applicable law; (ii) it is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation; (iii) it has the full right, power and authority to enter into these Terms and to perform its obligations hereunder; and (iv) these Terms are legally binding upon it and enforceable in accordance with their terms.

(b) **Seller's Representations and Warranties.** The Frio Controls Limited Warranty available at www.frio.co/legal sets forth all warranties with respect to the Products (the "**Limited Warranty**").

(c) **Customer's Representations and Warranties.** The Customer represents and warrants that: (i) all Products will be installed in accordance with the installation instructions set forth in the Specifications, and in installed by trained service professionals in compliance all applicable local electrical codes; (ii) at any time, it will not make any misleading, unfair or deceptive statements about the Seller or the Products, or misrepresent any of them in any way; (iii) it is qualified to do business in every location where the nature of its business activities requires such a qualification under applicable law; and (iv) neither it, nor any of its affiliates, officers, directors, equity holders or employees is located in any United States of America embargoed country, or to the Customer's knowledge after due inquiry, is named as a "Specially Designated National" or "Blocked Person" as designated by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), or is otherwise blacklisted by any instrumentality of the United States.

(d) **Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE LIMITED WARRANTY, THE PRODUCTS, FRIO SOFTWARE, THE DEVICE APPLICATION (AS DEFINED IN THE SOFTWARE LICENSE), INSTALLATION SERVICES AND ANY OTHER SUPPORT AND/OR TECHNICAL ASSISTANCE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. EXCEPT AS OTHERWISE SET FORTH IN THE LIMITED WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, USE OR TITLE, OR NONINFRINGEMENT. THE SELLER DOES NOT WARRANT THE PRODUCTS WILL MEET THE CUSTOMER'S REQUIREMENTS, NOR DOES IT GIVE ANY WARRANTY ABOUT THE RESULTS THAT MAY BE OBTAINED BY USING THE PRODUCTS, FRIO SOFTWARE, THE DEVICE APPLICATION, INSTALLATION SERVICES OR ANY OTHER SUPPORT AND/OR TECHNICAL ASSISTANCE. THE SELLER DOES NOT WARRANT THAT OPERATION OF OR USE OF FRIO SOFTWARE WILL BE UNINTERRUPTED, BUG OR ERROR FREE, OR ENTIRELY SECURE. THE SELLER DOES NOT WARRANT THE SPECIFICATIONS WILL BE FREE OF OPERATIONAL, TECHNICAL OR EDITORIAL ERRORS AND/OR OMISSIONS. THE CUSTOMER ACKNOWLEDGES THE SELLER DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND FRIO SOFTWARE, THE PRODUCT, AND THE DEVICE APPLICATION MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. THE SELLER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

(e) **Indemnification.** The Customer hereby agrees to defend and hold harmless the Seller and its managers, officers, members, agents, employees, and its successors and assigns (each, an "**Indemnitee**") from and against any and all third party actions or claims, and to indemnify the Seller and its Indemnitees from and against any and all claims, losses, liabilities, sums of money, damages, expenses and costs (including, but not limited to, reasonable attorneys' fees) arising from such action or claim, to the extent related to: (i) the Customer's violation of applicable law; (ii) the Customer's breach of any representation or warranty, or of any term or condition, set forth in these Terms; (iii) the sale, resale, licensing, distribution or use by the Customer; (iv) the Customer's negligence or intentional misconduct; (v) the Customer's unauthorized or improper use of the Products and/or Frio Software; and/or (vi) an End User's (as defined in the Software License) breach of any term or condition, or of any of its representations and warranties, set forth in the EULA. The Customer shall not settle any claim without the Seller's prior written consent, unless such settlement: (A) includes an unconditional release of the relevant Indemnitees from all liability arising out of such claim; and (B) is solely monetary in nature and does not include an admission of fault by the Seller, any injunctive or equitable relief against the Seller, or otherwise adversely affect the Seller.

(f) **Limitation of Liability.** IN NO EVENT WILL THE SELLER BE LIABLE TO THE CUSTOMER OR TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, REMOTE, COVER, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOST PROFITS, ARISING FROM OR RELATED TO THESE TERMS AND/OR THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS, EVEN IF THE CUSTOMER WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF THE SELLER FOR ANY CLAIM, LOSS OR DAMAGE OF ANY KIND ARISING UNDER THESE TERMS OR IN CONNECTION WITH THE PRODUCTS, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, INDEMNITY, OR OTHERWISE EXCEED THE ACTUAL AMOUNT PAID TO THE SELLER UNDER THE AGREEMENT GIVING RISE TO SUCH LIABILITY. NO CLAIM MAY BE ASSERTED BY THE CUSTOMER AGAINST THE SELLER MORE THAN TWELVE (12) MONTHS AFTER THE SHIPMENT DATE OF THE PRODUCT GIVING RISE TO SUCH CLAIM. IN THE CASE OF WARRANTY CLAIMS UNDER SECTION 3(b) ABOVE WHEREIN PRODUCTS ARE ACTUALLY DEFECTIVE OR DO NOT CONFORM WITH THE SPECIFICATIONS, THE CUSTOMER'S SOLE REMEDY, AND THE SELLER'S SOLE LIABILITY IS REPLACEMENT OR REPAIR OF THE AFFECTED PRODUCT(S), AT THE SOLE AND ABSOLUTE DISCRETION OF THE SELLER. SOLELY IF AND TO THE EXTENT REQUIRED IN ORDER TO MAKE THE LIMITATION OF LIABILITY SET FORTH IN SECTION 3 OF THESE TERMS ENFORCEABLE UNDER APPLICABLE LAW OUTSIDE OF THE U.S., NOTHING SET FORTH

IN THESE TERMS WILL EXCLUDE OR LIMIT LIABILITY TO A GREATER EXTENT THAN IS PERMITTED BY APPLICABLE LAW OR SHALL EXCLUDE OR LIMIT LIABILITY FOR FRAUD, FRAUDULENT MISREPRESENTATION OR FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE.

THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE PARTIES ENTER INTO THESE TERMS IN RELIANCE UPON THE LIMITATIONS OF LIABILITY SPECIFIED HEREIN, WHICH ALLOCATE RISK BETWEEN THE CUSTOMER AND THE SELLER AND FORM A BASIS OF BARGAIN BETWEEN THE PARTIES.

4. **FORCE MAJEURE.** A party shall not be liable for any delay in performing its obligation under these Terms (except for such party's payment obligations hereunder) if that delay is caused by circumstances beyond its reasonable control. The party so delayed must promptly notify the other party in writing of the reasons for the delay, and the likely duration of the delay. The performance of that party's obligations shall be suspended during the period the circumstances continue and that party shall have an extension of time for performance of its obligations equal to the period of the delay. Except where that delay is caused by the act or omission of the other party, any costs arising from such delay shall be borne by the party incurring such costs. A party delayed shall use its reasonable endeavours to overcome the circumstances causing the delay as promptly as possible.

5. **RETURNS.** The Products may only be returned for refunds or exchanges in accordance with the terms and conditions set forth in the Frio Controls limited warranty and returns policy posted at: www.frio.co/legal, as updated by the Seller from time to time.

6. **INTELLECTUAL PROPERTY.** As between the Seller and the Customer, the Seller is and will remain the sole and exclusive owner of all right, title and interest in and to all intellectual property rights, titles and interests throughout the world in, to, and under the Products and Frio Software (the "**Intellectual Property**"). The Customer agrees not to infringe upon, violate, or misappropriate the Intellectual Property. Except as expressly set forth herein, no right, title or interest in or to the Intellectual Property is granted by the Seller to the Customer whether by implication, estoppel or otherwise; provided, however, subject to the Customer's full and complete payment of all amounts due to the Seller in connection therewith, the Seller grants to the Customer a limited, personal, non-exclusive, non-transferable, non-sublicensable, revocable, Territory-wide (as defined in the Software License) license to use the Intellectual Property rights only in conjunction with, and to the extent incorporated in, the Products. The Customer agrees not to remove or deface any of the Seller's marks from any location on which they appear upon the Products. The Customer will not take any actions inconsistent with the Seller; ownership of each of the Seller's rights in and to the Products or Frio Software or the Intellectual Property rights associated therewith. The Seller reserves all rights in the Products and Frio Software not explicitly granted herein. The Customer agrees that any improvement, enhancement, or modification relating in any way to the Products and/or Frio Software (each, an "**Improvement**") is owned by the Seller without any further consideration, regardless of which Party conceives of or develops such Improvement.

7. **THIRD PARTY PRODUCTS AND SERVICES.** In connection with the Products and/or Frio Software, the Seller may recommend a third party's products and services and/or rely on data or information provided or generated by such third party's products and services. Any business relationship, exchange of data, or other interaction between the Customer and a third party and/or any purchase, download, or use by the Customer of any product or service offered by a third party, is solely between the Customer and such third party. Further, the Customer hereby acknowledges the Seller does not make any representation, warranty, or guarantee with respect to such third parties, their products or services, or the accuracy, reliability or completeness of any such data and information. The Customer agrees the Seller is not liable for: (a) any loss or liability caused by such third parties; or (b) any acts or omissions based on its reliance on such data and information.

8. **INSTALLATION AND OTHER SERVICES.**

(a) Unless otherwise agreed upon in writing, installation and set-up of the Products is the Customer's responsibility. If the Seller is providing Installation Services, the Customer agrees to furnish: (i) all technical matter, information, and other inputs, together with such knowledgeable personnel, as reasonably determined by the Seller to be necessary in connection with its performance of the Installation Services; and (ii) access to the Customer's computer system, configured as reasonably necessary for the Seller's performance of the Installation Services. The Customer acknowledges the Seller's ability to perform the Installation Services is conditioned on the Customer's timely response to the Seller's requests for such inputs and access and the Seller will not be in breach of the Agreement for delays in Installation Services caused primarily by the Customer's failure to provide such timely response. The Customer represents and warrants to the Customer maintains and will continue to maintain a safe working environment for any of the Seller's personnel working on-site at the Customer's locations. The Customer agrees the Seller may subcontract or delegate to any entity or individual all or any portion of the Installation Services.

9. **GENERAL.** No failure or delay of any party to exercise any right given pursuant to these Terms or to insist on strict compliance by any other party of any obligation in these Terms shall constitute a waiver of any party's rights to demand exact compliance with the terms of these Terms. Any waiver shall be an effective waiver only if expressly set out in writing and signed by the party making such waiver. If it is held by a court that: (a) any part of these Terms is or would be void, voidable, illegal or unenforceable; or (b) the application of any part of these Terms to any person or circumstances is or will become invalid or unenforceable unless any part of these Terms were severed from these Terms; that part shall be severable and shall not affect the remaining terms of these Terms. These Terms shall be governed in accordance with the laws of the State of North Carolina without reference to any conflict of law provisions. The parties further agree that the UN Convention on Contracts for the International Sale of Goods shall not apply to the sale of goods hereunder. The Customer is responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination. The Customer agrees to comply with all applicable export and re-export control laws and regulations, including but not limited to United States Export Administration Regulations (EAR) administered by the Bureau of Industry and Security, U.S. Department of Commerce, trade and economic sanctions regulations administered by OFAC, U.S. Department of Treasury, and any other export authorities identified in Supplement 3 to Part 730 of the EAR. Any disputes arising out of these Terms shall be solely and finally settled by arbitration in Durham County, North Carolina, United States, in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association. An award rendered in connection with an arbitration proceeding pursuant to this Section 7 shall be final and binding upon

the parties and any judgment upon such award shall be entered and enforced in any court of competent jurisdiction. Further, any arbitration award granted hereunder shall be enforceable under the applicable terms and conditions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention), as amended to date. Notwithstanding the foregoing, in the event of any breach or threatened breach of Section 6 of these Terms, the Seller may separately seek injunctive or other equitable remedies and relief directly from any court of competent jurisdiction irrespective of whether any arbitration proceeding has been commenced or is in process.